

STATE OF CALIFORNIA

OVERSIGHT BOARD

In the Matter of:) Docket No. 97-OSB-1
Electric Industry Restructuring)
Oversight Board)
-----)

Wednesday, March 19, 1997

10:05 a.m.

Sacramento Municipal Utilities District

6201 S Street, Auditorium

Sacramento, California 95814

REPORTED BY:

G. PALMER

OVERSIGHT BOARD MEMBERS

ROY A. ANDERSON, Oversight Board Chairman

LEWIS W. COLEMAN, Gubernatorial Appointee, Chief Managing
Director, Montgomery Securities

DIANE MARTINEZ, California State Assemblywoman

STEVEN PEACE, California State Senator

ARCHER F. PUGH, Gubernatorial Appointee and Attorney

JOHN ROZSA, Designee for Senator Peace

OVERSIGHT BOARD STAFF

DAVID FREEMAN, Trustee

GARY C. HEATH, Interim Executive Director

SHARON HOWELL, Executive Assistant

ERIK N. SALTMARSH, Interim General Counsel

ALSO PRESENT
(Alphabetically Listed)

GREG BLUE, Destec Energy

RANDY BRITT, Robinsons-May, TAC

C. ANTHONY BRAUN, Attorney

ANGELINA CALDERA

BILL CARNAHAN, CMUA, City of Riverside

DAN L. CARROLL, Downey, Brand, et al.

BOB CASTANEDA, from the Wilson Administration

TIM CHERRY, Metropolitan Water District, Los Angeles

ROSS CLARK, R and B Associates, Inc.

MICHAEL FLORIO, Utility Reform Network

ARTURO GANDARA, University of California School of Law, Davis

BRENT GOKBUDAK, Los Angeles DWP

CAROL GUTHRIE, Chevron

ROBERT HENDRIX, San Luis Obispo County

ANDREW HODGMAN, McKenna, San Francisco

LYNN HOGAN, ARCO

LON W. HOUSE, Association of California Water Agencies

GERALD JORDAN, California Municipal Utilities Association

CAROLYN KEHREIN, California Manufactures Association

ROBERT KENDALL, Southern California Edison

JIM LINDHOLM, County of San Luis Obispo

LYNE MILSTAN, TANC

ALSO PRESENT
(Alphabetically Listed)

EDWARD MRIZEK, Palo Alto Utilities

MICHAEL MURRAY, Southern California Gas Company

KAREN NORENE MILLS, California Farm Bureau Federation

W. KENT PALMERTON, Northern California Power Agency

DEAN H. PARK, R.W. Beck, Inc.

VIJU PATEL, California Department of Water Resources

HENRY RAMIREZ, California Department of Water Resources

TED REECE, PG&E

TED RIEGER, California Energy Markets

MICHAEL RYAN, San Luis Obispo County

TYSON SHOWER, U.C. Davis Law School

JAN SMUTNY-JONES, Independent Power Producers

JEANNE SOLÉ, Hetch Hetchy Water and Power

PATRICK SULLIVAN, AECA

A.A. WATCHEMPINO, General Electric Co.

TOM WILLOUGHBY, PG&E

FIONA WOOLF, McKenna & Company

ERIC WOYCHIK, TURN and UCAN

ED YATES, California League of Food Processors

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P R O C E E D I N G S

CHAIRMAN ANDERSON: Good morning. The meeting please come to order. And I would say good morning to all the assembled here. Before we begin today's hearing, I would like to introduce the members of the Board.

And I'm Roy Anderson, Chairman of the Board, of the Oversight Board.

First is one of our two legislative members, Assemblywoman Diane Martinez. And she is on her way.

Senator Steve Peace could not be with us today, but he is represented by his assistant, Mr. John Rozsa.

The gubernatorial appointed members are Archer Pugh to my left and Mr. Lewis Coleman to my right.

I would also like to introduce the Board Staff, Mr. Gary Heath, our executive director; and Mr. Erik Saltmarsh, our legal counsel; and Mrs. Sharon Howell, our executive assistant.

And, certainly, on behalf of the Board, I sure want to thank the Sacramento Municipal Utility District for allowing us to use their auditorium and facilities today. We greatly appreciate their generosity.

On March 7th the Board issued a hearing notice for today's proceeding. The purpose this hearing is to continue with the Board's March 1997 agenda as published in its March 4th, 1997

hearing order.

As stated in the notice and as prescribed by Statute, the Board is to determine that composition and terms of service of the members of the governing boards of the Independent System Operator and the Power Exchange, and appoint the initial governing board members of the Independent System Operator and the Power Exchange -- I'm going to refer to them as ISO and PX. It'll save time -- and direct those entities to take the necessary steps for incorporation as soon as possible and as separately public benefit and nonprofit corporations under the California Corporations Code.

In addition, the Board issued an order on March 15th directing all interested parties to submit individual nominations to the Board for its consideration.

Pursuant to this order and as prescribed by the notice, the Board will first take up a discussion of the Articles of Incorporation and the Bylaws of the ISO and PX.

But before we begin, I would like to offer my fellow Board members an opportunity to make some opening comments.

And, John Rozsa, would you --

MR. ROZSA: I don't have any comments right now. Thank you.

CHAIRMAN ANDERSON: -- please be first.

MR. ROZSA: Thank you.

CHAIRMAN ANDERSON: Okay. Archer?

MR. ARCHER: I have no comments today. I think we have a long enough agenda.

CHAIRMAN ANDERSON: Lewis?

MR. COLEMAN: I have no comments.

CHAIRMAN ANDERSON: Okay.

MR. COLEMAN: Thank you, Mr. Chairman.

CHAIRMAN ANDERSON: Now let us turn to Mr. Heath, our executive director, --

MR. HEATH: Yes.

CHAIRMAN ANDERSON: -- for comments.

MR. HEATH: Yes. Thank you, Mr. Chairman, members of the Board.

Just a couple of items I wish to report to the Board.

We have completed our second full-week as a fully functional office. However, the last few days have been a little bit tense around the office, trying to get ready for hearings and the various filings, and so I guess there might be some mutiny afoot. So we've been working extra hours.

As of last night, about nine o'clock, the Board received 43 separate filings for today's proceeding. Many of those are files that have actually put forth the nominations for the various classes as proposed by the trust. Also there were a number of filings that support nominations or nominees for those filings.

You have before you, Board members, and Mr. Chair, a

binder, red this time, that has a copy of all of the filings that were submitted.

It also has a matrix in it which summarizes, if you will, a list of various classes, the nominees for each of those classes as well as the affiliations. That'll be found in the front of your binder.

Also in the binder is a letter that was sent on March 17th to -- to the trustee on behalf of the Board which requested certain information on the make-up of the various classes. That material was submitted last night to the Board. That also is in your binder.

Per the directive from the Board from last week the Staff has, in fact, entered into a memorandum of agreement with the California Energy Commission for staffing and services.

If you'd like, Mr. Saltmarsh, when he gives the general counsel's report, can go over any of the points that are in that memorandum.

Last, for today's proceeding, Mr. Chairman, I'd like to announce that parties who wish to speak probably should fill out one of these yellow cards. They're found at the tables in the back and at the entryways in.

If you'd hand those to Ms. Howell, she'll give them up to the board members.

The other thing is that we have on agenda which is

specific for today's hearing. And that is also found on the table in the back as well as in the binders of each of the members.

That concludes my report. And maybe at this time, we could turn to Mr. Saltmarsh for the general counsel's report.

MR. SALTMARSH: I only have two items I would speak to.

The first is that which Gary Heath raised, the now executed memoranda of understanding. There are actually two.

Rather than try to summarize those, those will be distributed to each of the Board members a little bit later on in the day today.

The second issue I would speak to for just a moment is that I would like to thank the staff of the trustee who's been sharing some evening hours with us over the last few days in faxing materials back and forth.

I will leave it to them to report any adjustments that they may be making to the filing proposals that you have seen. But I have received several sets of materials which I believe are in an effort by the Staff to ensure that aspects of the filing when and if filed in that form will comply with the California Statute.

And I'll leave that to the trustee's Staff to describe where there may have been some adjustments proposed.

CHAIRMAN ANDERSON: In view of the communication that

we as Board members have just received from Assemblywoman Martinez, would you please describe that? And would you wish to put it in the record?

ASSEMBLYWOMAN MARTINEZ: Yes, please.

After our last hearing, Oversight Board Hearing, I was somewhat concerned about how it is that the trustee's relationship worked with the Oversight Board and how that would affect the FERC filing.

And so, upon my investigation, found out that the original design for the trustee was, in fact, supposed to be limited in scope to infrastructure issues. Those infrastructure issues specifically dealing with hardware and software, technical and nontechnical.

And I had a concern that even though FERC had ordered -- that because FERC had ordered that it was the ISO that was to file before them and the Power Exchange, not some other entity created by the Public Utilities Commission.

And I wanted to make sure because of -- I guess I was confused about what Mr. Freeman's intent was. He had said that he was concerned that the ISO might, in fact, file something that was in conflict with the work that he had done. But the work that he had done was not entirely within his jurisdiction.

So I thought it more appropriate for us to look at the product, I understand it's 1600 pages, and from that product take

those things that are clearly within the trustee's purview and have those submitted to our Board, the Oversight Board, before they are submitted to FERC.

And the reason being is that they ought not be -- that they ought to be strictly within the parameters that have already been granted the trustee. And they should not go into the area of jurisdiction to be held by the ISO oversight board or the ISO board.

We had talked about, last time that we -- the last time we met that what's got to happen is the ISO oversight board ought to prepare a letter and send it to FERC telling FERC where we are in our process so that they would know that the ISO would have the ability to file and should be allowed to file once the ISO board was appointed.

However, did not envision that the trustee ought to be allowed to go forward as he has no legislative jurisdiction or authorization to do so. And it's important that that door be kept open for the ISO board and the ISO oversight board. So that's why the letter today is just clarifying where I think we ought to be on these issues.

Because the trustee's hired -- as he represents very good lawyers and they've invested a lot of time and effort into it, I don't think that we should dispose of his product either.

I think what ought to happen is that product ought to be

split into two areas. The first area being those things that are clearly within the ISO's jurisdiction. The second area being those things that are not in the ISO's jurisdiction.

So for purposes of defining that, it's far easier to understand that. And since his jurisdiction includes infrastructure, hardware and software, that all of the FERC requests for information dealing with infrastructure or hardware or software ought to be appropriately handled by the ISO -- I mean, excuse me, by the trustee, referred to the Oversight Board and ultimately to the ISO board when it's appointed.

And that we ought to take that information in submission, consider it as part of the larger filing. And that's my recommendation to this Board at this time.

And I think it keeps clear then where all of the roles and how all of the piece parts fit. I think otherwise we get into very muddy waters as to who, in fact, represents the State's position on electrical restructuring.

And I think that won't help us. I think one of things that was clear coming from FERC is FERC was telling us they wanted us to be clear about what we were doing. They wanted technical information.

I think if we start to send them different groups all representing to FERC that they represent the State's interest, that this is going to cause a lot of problems for us going further

down the path. So I think at this point we need to stop, take a look at it and delineate very clearly where the roles are.

And I think there's an important role for the trustee. I think he's done an excellent job in fulfilling that role. But now that the ISO oversight board is, in fact, in place, it's important to take advantage of the work that was done, and yet draw clear lines as to where those jurisdictions are.

So the recommendation that's before you right now simply states that if, in fact, the Board decides that you ought to let the trustee file, which I think is somewhat inappropriate because that's clearly not within his jurisdiction, that it be made clear to FERC that this is simply a place holder and it may not be in concert with what the ISO board ultimately files.

Likewise, I think the trustee ought to recognize that the ISO board be legislatively created in our intent for them to have self-governance, and not be subject to a board organized by the Public Utilities Commission having greater jurisdictional authority. That what ought to happen is the trustee ought to fall back to the role originally designed for him.

Now I understand that there were some discussions that happened after that position, the trustee position, was created. And that there was a feeling that without the ISO board being -- the oversight board being appointed and without the ISO board in place, that somebody needed to carry out and prepare to file

before FERC. I understand all of that, logistically speaking.

However, when those that came together to discuss that that thought that ought to happen, they clearly did so without legislative authority.

And I believe that that's an essential. If we're going to be talking about the position of the State of California on this issue going forward, it ought to be people that are appropriately in place and legislatively authorized; not people that are trying to make do because we're a little out of sync here.

So I acknowledge that fact and, once again, applaud him for the work that he did do. However, at this point, we are now in place and in a position to make decisions about these issues.

And I think we ought to make sure and carve out our authority the legislation intended that we should. And, obviously, and I think clearly FERC made clear that they wanted to hear from the ISO and the Power Exchange, and did not envision some other entity.

And I'm not sure to what extent the trustee, because his board was not created with the same kind of balance required under this legislation, would not be subject to some of the concerns of influence that FERC was concerned about. And that's why FERC wanted to hear from an ISO.

CHAIRMAN ANDERSON: Mr. Freeman? Would you comment on

that?

MR. FREEMAN: Mr. Chairman, I can certainly understand that people recently appointed to the top Oversight Board on this matter have a reason to be concerned and interested. And I welcome the concern and the interest.

This matter has been thought through very, very, very carefully in consultation with all the powers that be that existed before you got here.

The filing that we have put together is completely within our jurisdiction. Completely. There are not parts of it that go outside the jurisdiction.

The trustee -- and, you know, I'm a person that spent my life in this industry. And I didn't come out here at the request of the State of California to take over anyone else's jurisdiction.

I came out here at the request of the Governor's Office and the CPUC to try to make this happen. And I have consulted with everyone that I could reach.

And if I've failed to consult with everyone, it's only because I've been extremely busy trying to get the hardware and software out of the hands of the dreamers and into the hands of the vendors so we can meet the deadline that was imposed by statute.

I take the state law very, very seriously. And the most

important objective that was laid on to me and everyone else is to meet the January 1, 1998 deadline.

The consumers of this state have been promised a competitive market by then. And we have been working, as your Staff suggested, virtually night and day trying to make that happen.

There is no question about the authority of the trustee to make this filing. This is not an issue that is a debatable legal issue. The scope of work that I have and the money and the budget included many millions of dollars for doing this work.

I've been in consultation with everyone. And the filing is all about the things that the Federal Energy Regulatory Commission has asked the ISO and the PX to file. And we've been working with the utilities to coordinate to have a California filing. The work is virtually complete.

I have been consulting with your staff and others on the one part of the filing that reflects the arguments that we're making on behalf of this Board to try to persuade FERC to change its mind and permit this Board to carry out the jurisdiction that the state law empowers you to carry out, but which is now in conflict with FERC.

To be quite frank with you, sir, I am quite proud of the language that we've developed in consultation with your staff and others.

And I think we have arguments that me, as a somewhat unbiased observer, since I wasn't in on all the planning and all, I think are persuasive. And I think there's a good possibility that FERC will understand that there are important duties for this Board. And the language is before you.

If you have any suggestions about that language, if you want to change it or make it differently, that's the reason we're presenting it to you.

Other than that language, the filing is entirely dealing with the matters that the FERC has asked the ISO to file.

We are filing on behalf of the ISO, as we are authorized to do. And we consulted, again, with counsel on that. And there is no question that we are fully authorized to make this filing. And it deals with all the matters that my advisory committee has been wrestling with all these months.

These are the same classes that are before you for being on the board.

And I guess I would try to, if I could use the word "gently" again, and suggest that there isn't a problem here. There is complete cooperation with this Board. If you have any thoughts on the language that we prepared, we welcome to have them. And we have been responsive to suggestions in the past.

That's all, I think, that I need to say at the moment, unless there's some questions. I'd be happy to respond -- try to

respond to them.

ASSEMBLYWOMAN MARTINEZ: Let me be gentle as well.

You said at least twice that you consulted with "everyone." You thought and worked with all the "powers that be."

Let me suggest to you that one of the powers that be is the Legislature. And that in that Legislature there are two houses, a senate and a state assembly.

To the extent that we are, in fact, as you acknowledged last meeting, one of the powers that be, and you did not consult with us. You did, in fact, not consult with everyone.

The simple fact of the matter is that your counsel may tell you that you have jurisdiction to do this. But in crafting 1890, we did not give you legislative authorization to file on behalf of the State.

This is clearly, when we enacted AB 1890, we were clearly asserting our legal authority and jurisdiction over this issue. And in doing so, we did not ask or tell or say to the trustee that they ought to file on behalf of the ISO. Especially at the point that we created the Oversight Board, your jurisdiction was granted to you by a lesser body in terms of regulatory authority which was the CPUC, then the state Legislature.

This body was created by the Legislature, was directed by FERC. FERC did not direct the trustee to file. FERC directed the ISO. The ISO board is now here. And it's appropriate to call

into question where the trustee is with this issue and what the appropriate roles are.

So while I appreciate the hard work that you've done and needed to get done, it's an important foundation for what the ISO will ultimately file is clearly not within your jurisdiction.

FERC did not ask you to do it. The ISO oversight board did not ask you to do it.

And when you say that you consulted with you everyone, you did not consult with the Legislature. If you did not consult with the Legislature, even in a broader sense, at the very least you should have been talking to the person who chairs Utilities and Commerce on the Assembly side. That did not happen.

Or, at very least, if you were not clear about legislative intent on 1890 and the powers that we provided to the Oversight Board, you should have talked to at least the five members of the Conference Committee, of which I was one. Those conversations, sir, never took place.

And so, I would not say that your representation that you talked to everyone and "all the powers that be," is being entirely accurate. That's about as gently as I can phrase it.

However, at this point, since you have done the work and it's an important body of work, and our lawyers are currently reviewing the 1600 pages and are somewhere at page 800, and will be able to make recommendations to the Oversight Board, we thank

you for those efforts.

Nonetheless, we think it's important that you, at this point, confine yourself to your role in dealing with what you represented in the beginning as being software and hardware issues to make sure that this thing got out of the hands of the dreamers and into the people that would make it real.

But that FERC filing is clearly, in FERC's mind and in the mind of this Legislature, within the jurisdiction of the Oversight Board and the ISO. And in the absence of the ISO, the Oversight Board ought to make some decisions.

Now what I have done in addition to the letter that I've written to this committee today is written a second letter from the Legislature, from the State Assembly, making clear to FERC that it was not our intent in 1890 nor is it our intent at this point that any other body other than the Oversight Board or the ISO ought to be filing and ought to be considered as representing the State's interests as we gave that authority to the Oversight Board.

So whether or not at this point you agree with where we stand, I am operating appropriately in my legislative capacity as Chair of the Utilities and Commerce Committee in the lower house in bringing FERC's attention to my concern about this issue.

What I'm asking for at this point is for the Oversight Board to also acknowledge that in 1890 we gave the Oversight Board

the authority to appoint the ISO, that FERC has asked the ISO to appropriate file, that we ought to make good use of the work that you've done so far and thank you for that work, but that clearly that filing ought to be delayed; that it ought to be done so, finally, in the name of the ISO.

However, if the Oversight Board chooses not to do that, then we should submit a letter to FERC making it clear that it's preliminary work that has not been reviewed by the ISO and that the ISO may, in fact, change some of the work.

And I don't think that's inappropriate at all.

MR. FREEMAN: I would just indulge myself, if I may, in this one comment.

I was asked to come out to this state in early November, and frankly, in November and December, the Legislature, I don't think was in session.

And I thought, quite frankly, that my job was hardware and software only. I worked -- we worked very hard to get the log jam broken and get this done.

The overriding goal has been and is to get this system up and running by January 1, '98. An absolutely critical milestone in making that happen is to make the FERC filing on March 31st. I had no idea that I would inherit that responsibility when I came here.

ASSEMBLYWOMAN MARTINEZ: Neither did we.

MR. FREEMAN: Now but the plain truth of the matter is the scope of my work included the mandate that we do whatever was necessary to make the March 1 filing.

And I consulted with everyone that I consult [sic] with, and if I failed to consult with you, which I did, I apologize publicly. That was a mistake on my part.

But I have been working in San Francisco and I've been working very, very hard. And I did not volunteer to take on the awesome job of putting this filing together. But I'm a can-do person. And we filled the gap with the encouragement of everyone that I could talk to. We had public meetings week after week.

And everyone knew what we were doing. If we had not done this work, ma'am, we would fail the Legislature and the Governor and all of us would not make the deadline.

And if we ask for a delay, we are undercutting all the work that we're doing. We do not want a delay. We want FERC to move ahead on schedule. And we will have a filing for them.

Now it is not my fault that the governing board is not in place. I would have loved to have a governing board in place. But I am a responsible person, and I'm doing what my mandate says that I should do. And we have the material prepared.

The minute you have a governing board in place -- the one thing that you said that isn't quite true yet, we don't have the governing board. And if we had it, obviously, they would make the

filing.

But I am the trustee for the ISO and for the PX, and all the attorneys suggest that there is the authority to file. And they will have every opportunity as soon as they get there to ask for a technical conference, which I'm sure FERC will grant. And then they can express whatever different views they may have. They will have an opportunity to file or reply.

The real issue before this house is: Do we want to make the deadline or not?

ASSEMBLYWOMAN MARTINEZ: No. That's really not the issue.

The issue is whether or not the appropriate body is conducting that filing.

I understand that you believe you were under a mandate and you may well have been by those persons who hired you. You, however, were not under a State mandate -- or legislative mandate to do that.

Beyond that point, this ISO oversight board is, in fact, under legislative mandate to handle these issues in the absence of the actual ISO oversight -- the actual ISO board.

MR. FREEMAN: I understand --

ASSEMBLYWOMAN MARTINEZ: So we're not really far apart, Mr. Freeman, at all. I am simply saying to you that what ought to happen at this point is that because that jurisdiction

clearly lies with the ISO board, and in its absence, the ISO oversight board, that what ought to happen is the filing ought to be submitted to the Oversight Board, that it ought to be bifurcated so that you have one portion representing those things that are clearly within the trustee's jurisdiction and another item clearly representing those things that are not software and hardware infrastructure issues.

And that the Board ought to represent to FERC that when the actual ISO Board is appointed they will be doing a filing that will answer all of their concerns.

I don't believe that FERC would not allow the State of California to weigh in in an appropriate timeframe, given that where we are in our schedule.

I think those are legitimate arguments we make to FERC. I think if we do a good job in doing that, if we present a cohesive plan, we're not going to have any problems.

I think, however, if we go this route with somebody who's not been given legislative authority with the Legislature taken an issue with it, which we have, and the Legislature writing to FERC telling them that there's a problem here, that it's going to severely undermine all of those efforts. We don't need to go that route.

What needs to happen is the Oversight Board is now in place. We need to assume our authority and our jurisdiction as

granted by AB 1890. And we need to carry forward.

We do not know, sir, those of us who are elected to represent and that are appropriately placed here that, in fact, your filing does that.

So we have the greater mandate from this state. And we have to add that proper balance in there. That's what 1890 certainly represented.

MR. FREEMAN: I'm sure the Chairman doesn't want to hear a much more or you want to hear much more from me, but you made one important statement. You said that we are rather close.

And I would like to close whatever gap that there is.

I regret, deeply regret that I didn't approach you and get your input earlier. That was just an error on my part. But that was not anything done other than the fact that we just we're working all the time.

The overriding statement of state law in 1890 is to get this system up and running by January 1, 1988. That is the clear command of the Statute.

ASSEMBLYWOMAN MARTINEZ: But, sir, it --

MR. FREEMAN: Correct?

ASSEMBLYWOMAN MARTINEZ: -- doesn't say, "and absent an ISO, anybody who wants to ought to be able to do that."

MR. FREEMAN: Well, that's correct.

ASSEMBLYWOMAN MARTINEZ: It gave that authority to

the Oversight Board.

MR. FREEMAN: It did not give the authority to make this filing to the Oversight Board, ma'am.

I -- I --

ASSEMBLYWOMAN MARTINEZ: The Federal Energy Regulatory Commission specifically stated that it would be the ISO board or the Power Exchange. You are neither. You are the trustee responsible for infrastructure.

In the absence of that board the Oversight Board is in play.

That you did not talk to me is not an individual type of an issue. I represent the lower house in this issue. So it's -- what you're -- and also a member of the five-member committee that designed 1890. So I'm clear about what our intent was.

I was really rather shocked last week when I heard the representations knowing that when we crafted 1890 that was not legislative intent. It was always the intent that it be the ISO and only the ISO. And that it not be some other entity created by the Public Utilities Commission.

And that being absent, clearly, would default to the Oversight Board.

MR. FREEMAN: I -- I --

ASSEMBLYWOMAN MARTINEZ: At this time.

CHAIRMAN ANDERSON: Well, could we ask opinion of

counsel?

[Laughter.]

MR. SALTMARSH: Which question?

[Laughter.]

CHAIRMAN ANDERSON: As to whether the trustee has the authority to file.

MR. SALTMARSH: Well, I would prefer, and I think it's unnecessary to get into interpretations of the trust's document as to what the duty of the trustee to the trust is, which is really what's defined in that document.

I would not care, because I don't think it's probably necessary to get into a debate on the issue of whether preparing this filing is an appropriate use of the resources that are in the trust.

MR. FREEMAN: I kind of think it's important.

MR. SALTMARSH: Well, I --

MR. FREEMAN: Since we made the investment and done the work, to get some reaction from this Oversight Board --

MR. SALTMARSH: I say that --

MR. FREEMAN: Since the issue's been raised --

MR. SALTMARSH: Right.

MR. FREEMAN: -- because it's a very important item to me. I had expected to get a lot of thanks for this work.

MR. SALTMARSH: Right. And I -- and I think --

[Laughter.]

MR. SALTMARSH: I think everyone agrees that there's a lot of good work being done.

ASSEMBLYWOMAN MARTINEZ: I believe we did start by thanking you.

MR. SALTMARSH: Yeah. I use that preface to say: I think the question, to the extent there is one, and clearly there is one, is not over: Is this development work within the scope of the trust in terms of the trustee spending money to do preparatory work in anticipation of an ISO filing?

I think the question --

MR. FREEMAN: Well, that's very clear for the scope of my work; isn't it?

MR. SALTMARSH: Right. But the question is --

MR. FREEMAN: Yes, but isn't it?

MR. SALTMARSH: -- it isn't even that question.

It's: With FERC having requested a filing from the ISO, is it then appropriate for the trustee to take the -- and let's going ahead and say it, appropriate development work that was done in preparing materials for a filing, and make that filing as the trustee?

And it would be my preliminary feeling that that's not a decision that's probably answered conclusively by the scope of the trust document.

The FERC filing asked for the ISO -- clearly, any filing that came in from the trust or from the trust and this Board, or from anyone else at this point, absent a seated ISO governing board, is a proxy filing for the ISO.

And I think it becomes a question of both policy of the State and a question, perhaps, in member Martinez's mind, whether there's some legislative intent that can be divined otherwise. But I think there are two competing concerns here.

While FERC wanted -- and I would opine that it is fairly clear that the filing that FERC said that they truly would prefer to get is the one from the ISO Board that doesn't exist.

The question is: In absence of that board, but in the face of the deadline, what is the best policy decision? Because I think everyone would agree that the true requested filing party does not exist at this moment.

MR. COLEMAN: Can I ask you if you could maybe just narrowly deal with the issue of whether or not this Oversight Board, in your judgment, has the authority to direct the trustee to go ahead with the filings, thereby eliminating any jurisdictional issues over who can file?

MR. SALTMARSH: Well, indirectly the Oversight Board has legislative authority to put in place a governing structure for the ISO and for the PX.

And to that extent, by implication, there have been

several suggestions that, as an expediency measure, if it was going to take some length of time to determine a permanent composition or to seat a permanent Governing Board, one option was some interim structure and there seemed to be an agreement, I think, from the various interested parties that the Oversight Board would have authority if they thought that was an appropriate policy call to put something in place as an interim governing structure.

If you could do that, you could probably anoint something else to be in the place of the ISO board as an interim.

There is no clear answer. There is nothing --

CHAIRMAN ANDERSON: Why go through that horse puckey?

And the critical thing is the January 1st, operational -- put into operation, January 1st, 1998.

Now how do we get there?

Maybe Assemblywoman Martinez has, if I understood her correctly, posed a solution to this. Couldn't the trustee file with the FERC, subject to the approval of the ISO when it's constituted?

Mr. Freeman, did you --

MR. FREEMAN: That's essentially what I thought we said we were going to do at the last session.

And that's essentially what we're doing.

CHAIRMAN ANDERSON: Well, would that satisfy --

ASSEMBLYWOMAN MARTINEZ: The issue is that the deadline is the 31st.

CHAIRMAN ANDERSON: Yes.

ASSEMBLYWOMAN MARTINEZ: So if it's subject to the approval of the ISO board that does not exist, that won't work.

If they want to make it subject to the approval of the ISO oversight board, then I would not be opposed to doing that because it would mean that we would at least, operating in proper jurisdiction, weigh in on behalf of the board that we are going to create, that would make more sense.

But to have -- then do it subject to some other approval after it's already a done deed doesn't seem to make sense. At least sequentially, it doesn't make sense.

CHAIRMAN ANDERSON: Subject to the approval when the ISO board is constituted.

ASSEMBLYWOMAN MARTINEZ: Well, if -- then that goes back to --

CHAIRMAN ANDERSON: We're going to --

ASSEMBLYWOMAN MARTINEZ: -- to the earlier point --

CHAIRMAN ANDERSON: -- constitute the board.

ASSEMBLYWOMAN MARTINEZ: That goes back to the earlier point that what we would say is we would file as the oversight board with FERC as recommended in the letter that this is simply a place holder, something they consider. And that

leaves the appropriate -- it leaves the option for the ISO Board to later on say either, "We approve it" or "We disapprove it."

MR. PUGH: Well, I think you've got a problem there. To me, any conditional filing with FERC is going to be a conditional filing and will not be even acted upon until it's firm.

So if you make a filing to FERC and say it's subject to somebody else saying, "Yes" or "No," and, "Maybe we'll change it, maybe we won't," the March deadline doesn't mean anything because they're not going to accept it as a filing.

ASSEMBLYWOMAN MARTINEZ: Then I think what will happen is that FERC will view this very much as you described it. They'll look at it as a conditional filing because they will have an opinion from the Legislature that the trustee is not able, at this point, to operate in that capacity as a representative for the State. And they have not been duly appointed or elected or authorized by Statute to make this filing. So we'll still end up in that situation.

I think the only way to salvage all the good work of the trustee is to file with FERC and tell them where we are and when the board will be appointed. To take the information that was provided, the technical information that's clearly within the trustee's purview, and allow that portion of it to be filed, subject to our approval, so that FERC will have something to start

working on.

You know, if I look --

MR. PUGH: They won't --

ASSEMBLYWOMAN MARTINEZ: -- at this in real terms --

MR. PUGH: You see, the problem is they won't work on it.

ASSEMBLYWOMAN MARTINEZ: -- I don't think what's going to happen -- yes. But I don't think what's going to happen is -- and that's fine, too.

I don't think that FERC is going to get all of these submissions from all of these states and on the same day review every one of them.

I think there's going to be -- if we make an argument to them where we are in the process and even commitments as to when we will get that final information, it would be in FERC's best interest and in the State's best interest to take the time to do that properly, than to have some interim filing that the ISO may or may not embrace.

We don't know at this point that the ISO would want to be bound by that filing.

But we lock ourselves into that position -- I don't think it's desirable.

So at this point either we make this clear to FERC that we don't believe that the trustee is within his jurisdictional

authority to file on behalf of the ISO, because that authority has not been granted by the Legislature --

MR. PUGH: As I understand, you've already done that; is that correct? The letter --

ASSEMBLYWOMAN MARTINEZ: The letter --

MR. PUGH: The letter went out --

ASSEMBLYWOMAN MARTINEZ: The letter has not yet been mailed. It has been written.

MR. PUGH: Oh, okay.

ASSEMBLYWOMAN MARTINEZ: And I thought to come and talk to you all today to discuss this before we put it across the desk. And that's where we're at.

MR. PUGH: It appears to me that if you're going to try to make any kind of a conditional filing that is subject to somebody else's -- you might as well hold off the filing until you've got it ready to go, and then the proper authority to do it, because I just don't -- knowing FERC in the past and the way they've transacted business, unless it's a done deal going in with responses to be done to a done deal, they're not going to even publish further response time to start.

And they won't publish further response time to start until you have a done deal.

And if we delay beyond the 31st, then they offer -- chances are you're going to miss the 1-1-98 deadline. But maybe

that's the choice we have to make because of where we are.

I don't think we're going to lose anything that the trustee's done, because most everything that I've seen so far has been done in a manner that will take minimal, if any, changes.

I think the only areas that I have some problems with, which we'll get to discuss, I think is the role in the Bylaws with regard to the fact that I don't think you're authorized at this point to make that filing without our approval of the selection procedures, the classes that go in, the methods of handling those and the Oversight Board's role within the concept of the Bylaws.

And I think those would have to be done by us before you would have the authority, even as a trustee, assuming we allow that to go in.

MR. FREEMAN: Of course. And that's what I hoped would be the subject of this meeting so that we could file what you had agreed to.

And we were -- and that's why we've been working so hard to try to be of maximum help to facilitate a decision today on these thorny questions where we've tried real hard to work as your Staff to provide the material. But it is time for some straight talk.

I have the utmost respect for this Board. I'm here pleading before you. But the Federal Energy Regulatory Commission has shown some disrespect for this Board. They have ruled

unfavorably on most of the aspects of your jurisdiction.

And it is very, very important that we go to FERC with the best winning hand that we can. And that would be a filing on behalf of the Independent ISO and the Independent Power Exchange, a filing that has been fashioned by the classes of people that I have every reason to believe you're going to appoint to the governing board so that we have the substance of the governing board's views in the great bulk of this filing.

To the extent that it deals with the Oversight Board, we're trying our best to get your judgments before March 31st so we can include them in the filing.

And if you haven't made a judgment, we will say so.

But we are fully empowered to make this filing on behalf of the ISO and the Power Exchange. And this is critical, critical, to making the 1-1-98 deadline.

Most of this filing is tied in with the hardware and software that has been ordered and is under construction.

In order to make the deadline we have moved ahead. And the filing is part and parcel of the hardware and software except for these policy issues that we're begging you to decide. There really isn't a problem here if we can just get on with the agenda of this meeting.

MR. ROZSA: Mr. Chairman.

CHAIRMAN ANDERSON: Yes.

MR. ROZSA: Senator Peace certainly understands and agrees that AB 1890 didn't contemplate the trustee filing on behalf of the ISO.

However, AB 1890 did contemplate that the Public Utilities Commission would represent the interests of the ISO -- of AB 1890 at FERC, and the Public Utilities Commission has appointed the trustee.

And so the trustee can be seen as an instrumentality of the Public Utilities Commission filing on behalf of the ISO at FERC as was contemplated in AB 1890.

He also believes it's important not to delay the filing. The consequences for a late filing for a 10-percent rate cut and the issuance of the bonds is something he takes very seriously.

At the same time, Assemblywoman Martinez suggested that it might make sense to split the filing and have certain elements of that filing carried over by the Oversight Board and others carried out by the ISO, which are within its competency.

And that's not a bad idea, particularly as regard the representations made to FERC regarding the functions of the Oversight Board.

He wouldn't have any problem with a letter to FERC advising FERC of the schedule for the appointment of the actual Oversight Board members. But he wouldn't be in favor of delaying the filing pending a review of the filing by the Oversight Board

-- the full filing by the Oversight Board.

MR. FREEMAN: I would just state again for the record that the portion dealing with the Oversight Board is in draft form in your hands. And whether it's made, you know, as part of our filing or not is not the substantive issue.

If it reflects your views and your judgment, it seems to me that we leave to the lawyers exactly how the package should be put together.

MR. PUGH: Well, I think that letter's got to tie in to what we do to the Bylaws with regard to the --

MR. FREEMAN: Right.

MR. PUGH: -- reference of the Oversight Board in the Bylaws, which --

MR. FREEMAN: Correct.

MR. PUGH: -- the current draft I have has almost no reference at all.

MR. FREEMAN: It's not up to date because we're awaiting your decisions to bring it up to date.

MR. PUGH: I understand that. But those are the areas that we, I think, need to address.

CHAIRMAN ANDERSON: Well, I would propose to defer the question until we look at the Articles of Incorporation and the Bylaws and see if we have any problems there. And then I would go on with the -- with the designation of the Board in the shortest

time possible, with due care, and see if we couldn't get a Board in place in time to meet the March 31st deadline.

How does that sound?

MR. COLEMAN: I mean, it sounds fairly practical to me. I -- obviously, some of these problems go away if there is a board.

CHAIRMAN ANDERSON: Yeah.

MR. COLEMAN: I -- conversely, I -- there's no point in trying to put something together that's so hasty that it isn't going to work, because, in the long run, this whole operation needs to work.

So I think that there's a delicate balance.

Either way, we're going to have to go through the Articles of Incorporation and the Bylaws to be comfortable before anything is done. And that ought to be the first order of business.

And if we can progress down the road rapidly enough so that it makes some sense to ultimately appoint a Board or, as you suggested, a temporary board, at the last meeting. Then we have probably solved or satisfied the filing problems.

I -- I guess the ultimate question, again, is probably one we'll get to ask at almost every meeting: What happens if we are a week late?

MR. FREEMAN: I think if you miss this deadline you've

told FERC that the State Law isn't the most overriding consideration, the deadline is the most consideration.

And people that have worked at FERC in recent years tell me that that would be a signal to them that we -- that they don't have to meet the deadlines. And that there's something very, very important about meeting their deadline.

You have no reason to believe that they won't reset the date for a month or two months later.

MR. COLEMAN: Okay. Let me be a little bit more careful.

Would you rather submit a bifurcated two-part form on the 31st to FERC, because we're not quite prepared to do it? Or would you rather do it by April 15th, fully vetted and supported by a Board of the --

MR. FREEMAN: That's a -- to my mind, a no-brainer. We file by March 31st.

MR. COLEMAN: Okay.

CHAIRMAN ANDERSON: Okay. let's take up the consideration of the Articles of Incorporation and the Bylaws.

MR. COLEMAN: Can I just ask a quick question? We're dealing with the ones that were drafted either 3-12 or 3-13?

CHAIRMAN ANDERSON: Yes. That's the last I've got, is 3-12.

MR. CAZALET: Yes.

MR. HEATH: The version that's before the Board today is the draft dated 3-12. I understanding that --

CHAIRMAN ANDERSON: We'll take up the ISO first.

MR. COLEMAN: Mr. Chairman, the one issue that has already put on the table and probably the issue that's going have more long-reaching effects is this whole issue of how subsequent boards of directors are selected.

MR. PUGH: Well, can we start with the Articles, because I've got some problems with the Articles --

MR. COLEMAN: Sure. Go ahead.

MR. PUGH: -- that I missed. Go there first.

As I read the Statute, it appeared to me that the rules with regard to Article V on dissolution and who takes the action and the rules with regard to the amendment of Articles in Article VIII -- VII should all relate to the Oversight Board having an impact on those two areas and that the Bylaws should not be merely amended with the control of the Board alone.

I would want to add the Oversight Board as a body to have approval with regard to the actions necessary and reasonable for the continual reliable operation, what transfers are made there, including the sale of assets, et cetera.

And Article V and Article VII would add the Oversight Board as the approving body of an amendment to the Articles.

CHAIRMAN ANDERSON: Mr. Pugh, could you restate how you would want it read or how you want it to read?

MR. PUGH: Well, I haven't had time to draft the language. But I would think in Article V where the corporation can take action to transfer or distribute assets by either sale that the Oversight Board should have some authority for approval of the transaction or be part of the entity that has to give approval of the transaction before it can be completed.

It asks for the actions approved by the appropriate governmental regulatory entities. And I would add the Oversight Board as one of those entities.

CHAIRMAN ANDERSON: Yes.

[Comments off the record.]

ASSEMBLYWOMAN MARTINEZ: We know that FERC has some issue with our jurisdiction.

CHAIRMAN ANDERSON: Yes.

ASSEMBLYWOMAN MARTINEZ: But we're also fairly certain, although FERC hasn't really described what the interim period of time -- they acknowledge that we need to be in place to accomplish setting this thing up, but they're not specific as to what period of time that is.

MR. PUGH: Well, my --

ASSEMBLYWOMAN MARTINEZ: We see an ongoing role for the Oversight Board.

MR. PUGH: Yes.

ASSEMBLYWOMAN MARTINEZ: I'm just wondering whether or not your amendments --

MR. PUGH: Well, my approach to this is this: That it appeared to me from the Statute that we have an over- -- the State of California has said that we have an ongoing role.

ASSEMBLYWOMAN MARTINEZ: Correct.

MR. PUGH: Now FERC may not agree with that. But I don't think that we can change that role that the State has provided us with.

ASSEMBLYWOMAN MARTINEZ: True.

MR. PUGH: Therefore, I believe it's necessary that we put into the documentation and the filing what we believe our role should be in all of these issues.

Once that's submitted to FERC, if they don't like it and want to throw us out, we can argue with them there.

I think our point is that from our body we're mandated by the State to take an aggressive posture in the situation and take an aggressive role with regard to this whole restructuring process.

And we can put that in there and then use the arguments that we can put that the trustee has put in the letter form in our draft pockets here to substantiate and support the need for our role in the continuance and why FERC should change their mind.

But that's the approach I'm taking throughout all this.

ASSEMBLYWOMAN MARTINEZ: That makes sense.

CHAIRMAN ANDERSON: Counsel?

MR. SALTMARSH: Well, I keep getting the real unanswerable questions.

Member Martinez is clearly right. FERC has expressed serious concerns over conflicting jurisdiction, particularly as they relate to what FERC described as the ongoing governance of the ISO.

The FERC decision itself only spoke to two of the three roles of the Oversight Board that are set forth in Section 335 of the Public Utilities Code.

I believe that was because FERC may have been relying at that point on a submission that was made in their proceeding that talked about how the Phase I filings might have to be adjusted to accommodate AB 1890.

The one role that was not addressed one way or the other by FERC, other than as it relate to ongoing governance, was the role in Section 335(a) to oversee -- that is the term that is used -- to oversee the Independent System Operator and the Power Exchange.

FERC expressly disapproved of the ongoing role in appointing members of the governing boards and serving as an appellate body to the governing board of the ISO.

FERC expressly allowed a role for the Oversight Board in initial start-up and determining of governance of the ISO.

Where you are, I think, in complying with the California Statute, there's clearing an implication that the Oversight Board, both in California Statute, has an ongoing role in determining the governance of the ISO in terms of the membership of the governance and in oversight to ensure reliability, that there would be an implied validity in exercising some authority over who took over for the ISO.

But strategically I do think FERC is very nervous about the extent to which this is seen as the ongoing governing operation of the ISO.

ASSEMBLYWOMAN MARTINEZ: However, doesn't our Constitution require us to carry out the State's mandate and isn't Archer's proposed amendments consistent with that charter?

MR. SALTMARSH: Our Constitution absolutely does require that we follow the Statute and the express provisions of the Statute.

This issue that Mr. Pugh brought up seems to be a legitimate concern to the Oversight Board within the terms of the Statute.

But there's nothing in the Statute that speaks to this particular issue of dissolution or transfer, explicitly.

ASSEMBLYWOMAN MARTINEZ: Okay. But to the extent

that the Constitution requires us to carry out the authority that the State has granted us or mandated on us, it seems that this would be completely in keeping with that position.

Additionally we talked last time about the possibility that there would be legislation coming forward at the federal level that might take care of some of FERC's squeamishness on these jurisdictional issues.

MR. SALTMARSH: That's a possibility.

It's difficult to divine what FERC's philosophy will be in the face of introduced legislation, federally.

But I fully agree with you.

To the extent that we think that the terms of the State Statute direct us to a particular role, this Board should comply with that role, irrespective of FERC's opinion on that that's been expressed. That is the California constitutional mandate.

This is a little bit grayer area.

I think it is -- I would say that it appears to be a legitimate issue to the Oversight Board. I don't know that that's a statutory mandate to the Oversight Board.

ASSEMBLYWOMAN MARTINEZ: But at this point we could go forward and adopt his recommendations if the members approve.

CHAIRMAN ANDERSON: Archer, would you put that in the form of a motion --

MR. PUGH: I would do so. So moved.

MR. COLEMAN: Archer, you're including also the required changes in Article CII so that they can't reidentified back --

CHAIRMAN ANDERSON: Yes. I'd like to have both --

MR. PUGH: Yes.

CHAIRMAN ANDERSON: -- approval of OVSB on both of those.

MR. COLEMAN: I'll second.

CHAIRMAN ANDERSON: All in favor?

VOICES IN UNISON: Aye.

CHAIRMAN ANDERSON: All right. Thank you, Lew.

Now let's go back to your issue on the Bylaws.

MR. COLEMAN: Mr. Chairman, I don't know whether or not you want to flip through these page-by-page or whether you want to take up the big issues.

CHAIRMAN ANDERSON: No.

MR. COLEMAN: So I'm happy to take directions from you on what you'd like to do.

CHAIRMAN ANDERSON: I would like to address the issues that we have.

MR. COLEMAN: Okay. I guess the issues -- at least the major issues I have are -- the biggest ones are in Article 3, probably Section 3.

And it's clearly the issue of whether or not creating a

corporation whose directors are elected solely by the classes that are represented by the corporation or whether or not there is some other mechanism to get them elected seems to me to be sort of a critical issue, not only a critical issue in terms of some ongoing role for this Board, but generally a critical issue.

And I think that to the -- I think that the issue of whether or not in a nonprofit board the directors themselves ought to be elected by various classes of people, thereby creating I guess, on the one hand, probably some level of direct representation for the affected classes.

On the other hand, maybe not creating a board that can work together or function together or operate together is part and parcel of this delicate compromise that has been worked out.

I guess I would feel more comfortable in terms of sort of thinking about the broader issues in the State and thinking about making absolutely sure that this system worked and that there were some ways of fixing it if the directorship, which is fairly large, got embroiled in issues that couldn't possibly be solved to at least have this Board consider changing the words "elected" to "recommend," or something like that to this Board for final confirmation.

I think I would feel more comfortable. As I understand the legislation that if we addressed the issue on the election of directors to very carefully consider recommendations from the

various classes, but ultimately have the right to accept the recommendations from those classes or not.

CHAIRMAN ANDERSON: Archer.

MR. PUGH: As I understand that, there would be a recommendation that we either approve or disapprove and that basically this Board would not, on its own, insert a person on that Board.

MR. COLEMAN: Yes. I mean my sense is that, to sort of keep the spirit of the compromises, I would be more than happy to accept the role of approving or disapproving, not of the role of seeking, finding and changing.

[Laughter.]

MR. PUGH: Right. I think that's a good idea.

CHAIRMAN ANDERSON: I think it is good. I think it's good.

MR. ROZSA: Mr. Chairman, can I make a suggestion from Senator Peace at this point who agrees that that is the proper thing. But would suggest that the nomination process should provide more than one candidate for each position. That the Board should actually have an opportunity to select among the candidates that are put forward, rather than being merely a rubber stamp for the candidate that would come from one specific sort of class and would suggest that that more than one candidate from each position should be represented?

ASSEMBLYWOMAN MARTINEZ: I don't know that the Board would necessarily be a rubber stamp when a candidate came forward.

If the Board was not happy with that selection, the Board would simply not approve and that party would have to come back with another nominee.

If you asked for multiple nominees, and they don't have multiple nominees, then you create another set of problems.

So, perhaps, I think what we understand about our own jurisdiction is that if they bring a nominee forward that's not acceptable for whatever reason, we simply do not approve. And then you wait for the next nominee.

MR. PUGH: I think it also presumes that there will be a whole lot of people running for those jobs, and I'm not sure that's true.

[Laughter.]

MR. COLEMAN: I'd also presume that we would be the appropriate body for making that difficult and fine decision.

I thought about that quite a bit. And it strikes me that if this Board, in effect, approves nominations in a public forum where there's adequate opportunity for people to object to the names put forward, that we have probably pretty much accomplished the task.

CHAIRMAN ANDERSON: Yes. I feel so.

MR. PUGH: You want me to make that as a motion, move

that I believe amended?

CHAIRMAN ANDERSON: Archer, do you move it?

MR. PUGH: No. I asked Lew that. That's Lew's motion.

MR. COLEMAN: I wonder if we should --

MR. HEATH: Mr. Chairman, before a vote is taken, may I give you some procedural advice here, that perhaps when a motion is on the floor, that you would then allow for any parties to comment on that motion before there's a formal action taken by the Board?

CHAIRMAN ANDERSON: Yes. Right.

MR. HEATH: It might be helpful.

And at least perhaps offer the trustee and trustee's counsel an opportunity to comment on the change and see what, in fact, an impact -- if there would be impact of any note.

It's just a suggestion.

CHAIRMAN ANDERSON: Thank you.

Okay. Any comments from the audience on that that proposed change?

Counsel?

MR. SALTMARSH: I don't know that there's a legal issue. I think, as you've described it, if it were stated in the Bylaws it would meet the statutory requirement.

CHAIRMAN ANDERSON: Okay.

MR. ROZSA: Personal information here.

Have we defined what the function of the Oversight Board is in this particular case, or have we simply pointed out here that the governing board will include governors that are recommended.

We haven't gotten to the point where we're talking about what the --

CHAIRMAN ANDERSON: Overall --

MR. ROZSA: -- Oversight Board does with respect to this recommendation. Is that correct?

MR. COLEMAN: Well, my intent was to suggest that this Oversight Board be the final authority on the approval.

MR. ROZSA: Right.

MR. COLEMAN: That it does not go to any other places.

MR. ROZSA: No, right. That's my understanding, too. But you only suggested a change in this particular word here, "recommended," and we don't have --

MR. COLEMAN: Yes. My intent is --

CHAIRMAN ANDERSON: It's overall.

MR. COLEMAN: Yes, it's overall. I don't --

MR. HEATH: Maybe part of the motion, Mr. Chairman, should be directing the Staff to draft suggested language or language for this --

CHAIRMAN ANDERSON: All right. Yes.

MR. HEATH: -- so we can help move this along.

I think we have the concept down and the conceptual approval of the Board to direct the Staff would be sufficient for us to draft the language that would be satisfactory.

MR. COLEMAN: I guess the companion set of issues is the issues about whether or not we have the appropriate classes or can change classes or whether or not classes need to be shuffled and who has the authority to do that.

My understanding is that essentially, with a two-thirds majority vote of the existing governors, they could change the classes under the Articles of Incorporation or under the Bylaws in this particular case.

And I wonder whether or not in some respects we would like the Oversight Board to either reserve the opportunity to ultimately approve changes in classes or to require changes in classes if, for some reason, we felt those classes were not representative of the people affected in the State of California.

ASSEMBLYWOMAN MARTINEZ: That certainly sounds like it should be within the review of the Oversight Board.

MR. PUGH: Yes, I agree with that, Lew, very definitely. That, you know, no class changes should be made without to Oversight Board's approval and the Oversight Board should retain the right to modify or change classes.

CHAIRMAN ANDERSON: Okay.

ASSEMBLYWOMAN MARTINEZ: Sort of make it a

recommendation based on two-thirds vote to the Oversight Board is what you're going to do there?

MR. COLEMAN: I think that --

CHAIRMAN ANDERSON: Restate that.

ASSEMBLYWOMAN MARTINEZ: They're going to make a recommendation to the Oversight Board. It will have to have like a two-thirds approval to be recommended to the Oversight Board.

CHAIRMAN ANDERSON: Right.

ASSEMBLYWOMAN MARTINEZ: And then ultimately the Oversight Board approves or disapproves.

MR. COLEMAN: I'd like to sort of debate that one a little bit.

My sense is that if the Oversight Board has ultimate authority to approve it, then two-thirds majority vote is not required.

And the only reason I'm a little bit sensitive to that, and it may not be entirely applicable in this case, but two-thirds majority votes on boards of directors that are 25 and 30 members that represent lots of different classes may well look like trying to get the California budget approved.

[Laughter.]

MR. COLEMAN: And I'm just afraid that the dysfunction --

ASSEMBLYWOMAN MARTINEZ: You like to hit us where it

hurts, huh?

MR. COLEMAN: Oh, I think we've all suffered that one.

But I do think that there's an element of dysfunction. I think there's an appropriate element for -- there's an appropriate time for two-thirds vote, which is clearly a time when you want protect minority interests.

There's also a time when it's going to create a dysfunction. And we're talking about very active, large corporations in the day-to-day business of running large businesses.

And so my sense is that if the Oversight Board has some jurisdiction over changes in classes that recommendations from either of the corporations by a simple majority of their directors is sufficient to protect the class.

ASSEMBLYWOMAN MARTINEZ: But also I understand that the intent of the two-thirds vote was actually not to hold things up but so that the classes could not get together and, let's say, isolate another class.

The reason you'd want two-thirds vote before it came to us is because there some very strong consensus, not just a simple majority vote, that this ought to happen.

My concern is that then, let's say, the customer class was the isolated class, that the other classes could then make a motion and bring it to us, that we ought to decrease the number of

participants there.

So I mean there's a purpose for the check and balance. Sometimes it is called a tyranny of the majority.

MR. SALTMARSH: Mr. Chairman, I would simply suggest that if a class change was going to require ratification from the Oversight Board, the Oversight Board could certainly consider the weight of voting strength or the participation of classes in making that recommendation.

I have a certain anxiety about trying to direct into the Bylaws that -- from the Oversight Board that a certain governing board voting requirement would be necessary to bring that recommendation forward, because I think that gets into an area that traditionally would fall within what's defined as the operational governance of the corporation, which is the area where FERC is clearly concerned about too intrusive a role by the Oversight Board.

I don't think and I don't think anything in the Statute requires us to do that.

And it appears to me that if what the Oversight Board wants to do is ensure that, once it's approved the governing structure, that can't immediately be changed to something entirely different.

The ratification of a change itself is sufficient to do that without requiring any certain mechanism within the corporate

governance to bring a recommendation forward.

CHAIRMAN ANDERSON: All in favor?

VOICES IN UNISON: Aye.

CHAIRMAN ANDERSON: Next question.

MR. PUGH: Section 13 in Article III, the vote for dissolution.

Well, let's see, We covered that one.

CHAIRMAN ANDERSON: What page are you on?

MR. PUGH: That's on page 17.

I believe that we should again have the dissolution can't occur without the approval of the Oversight Board.

CHAIRMAN ANDERSON: I think that follows from the Articles of Incorporation.

MR. PUGH: Yes. Well, I think it should be spelled out in both places.

CHAIRMAN ANDERSON: Yes, right. Okay.

Motion to that effect?

MR. PUGH: So moved.

MR. COLEMAN: Second.

CHAIRMAN ANDERSON: All right. All those in favor say "Aye."

VOICES IN UNISON: Aye.

CHAIRMAN ANDERSON: Okay.

MR. COLEMAN: I just want to talk a little bit about

terms, which are back on Section 6 on page 14.

CHAIRMAN ANDERSON: Okay.

MR. COLEMAN: I think having three-year terms and having staggered three-year terms to get started is probably appropriate. But it is sort part and parcel of the core of the governance here. So I thought we would at least raise the issue to see if anybody had any other feelings about it.

ASSEMBLYWOMAN MARTINEZ: I was just wondering whether or not -- I think one of the issues that we have to deal with, we're going to create this structure and hope that it works, at least we plan that it will.

But if does not, if we find that we have an imbalance in the way that we've created this thing and it doesn't work as well, do we have, at least for the initial start-up period, someplace where we might have to re-ratify the appointees or do something -- take an affirmative action to leave it in place.

I mean do we have a way of dealing with the possibility that we might not have created the proper structure? That we might need to revisit how we -- you know, whether or not we need other positions or less positions?

I'm just wondering whether or not we're leaving ourselves some room.

You know, one of the things that the FERC is clear about is that we're here for the start-up period. That part they got

right.

And the idea is that if there have to be changes and modifications that we ought to give ourselves, at least in the start-up period, the opportunity to do that.

And I'm wondering if we simply come in with the staggered and say that this is a two-year appointment, that we might not be removing our ability to adjust to the changes that we might later on need to make.

MR. COLEMAN: I mean maybe there's sort of a mid-point there. And that is to go back to the suggestion that possibly the initial board serve a fixed term for a limited period of time and then roll into the rest of the board.

CHAIRMAN ANDERSON: Staggering.

MR. COLEMAN: And at least we could have one shot at saying, "Oh, gosh, this doesn't look too good," particularly given the fact that the activities of the corporation between now and January 1st, 1998 are going to be a bit different than the ongoing.

ASSEMBLYWOMAN MARTINEZ: Right.

MR. COLEMAN: So maybe what we ought to do is to see whether or not it's appropriate to put in the Bylaws the notion that we can have a board which could conveniently get reappointed all at once at the end of the year, or something like that.

ASSEMBLYWOMAN MARTINEZ: That sounds reasonable to

me.

MR. PUGH: Set initial board for one year and thereafter adopt Section 6.

MR. COLEMAN: Or until January 1st, or something like that.

MR. PUGH: Or I mean, yes, till January 1st, '98.

MR. COLEMAN: Actually we probably ought to make it February 1st, --

MR. PUGH: Yes.

MR. COLEMAN: -- in case we can't meet over Christmas or something.

MR. PUGH: And then adopt Section 6 for the balance with the three-year staggered terms?

MR. COLEMAN: Yes.

MR. PUGH: I guess --

MR. COLEMAN: The only other question in Section 6 that we might want to just notice is the terms are unlimited.

MR. PUGH: Yes.

MR. COLEMAN: And for a corporation that clearly has very important duties as far as public benefit is concerned. I just sort of question whether or not it's appropriate to have unlimited terms.

I have no problems having lengthy terms. I don't want to get in a huge debate about term limitations. But --

ASSEMBLYWOMAN MARTINEZ: I'd weigh in on that.

MR. COLEMAN: Yes. But I just wonder whether or not it would make sense to put some limit on the terms.

I think particularly in the nature of public corporations the more people that ultimately participate the better off you are. And creating some turnover may actually create a stronger public corporation.

ASSEMBLYWOMAN MARTINEZ: I would agree with you that there should be some term limit on it. And I would also agree with you that it should not be a short term limit.

Gee, you know, six years goes by pretty fast. And when you're trying to deal with big public policy issues, it just doesn't work too well.

So I would think something closer to ten years might be more appropriate.

MR. COLEMAN: I'd have no --

ASSEMBLYWOMAN MARTINEZ: But I -- that's arbitrary.

MR. COLEMAN: -- no problems with four terms.

MR. PUGH: Maximum of ten years.

MR. COLEMAN: Or 12. Make it 12, if they're three years.

ASSEMBLYWOMAN MARTINEZ: Twelve terms.

MR. PUGH: Yes.

MR. COLEMAN: Four terms.

MR. PUGH: Four terms. Twelve years.

ASSEMBLYWOMAN MARTINEZ: Then four terms.

MR. PUGH: That sounds good.

CHAIRMAN ANDERSON: What about the thought that initially --

MR. SALTMARSH: I don't know if anyone is going to want to do it twice.

[Laughter.]

MR. PUGH: We may be lucky to find someone to do it for four terms.

CHAIRMAN ANDERSON: Initially you would propose that the first term would end on when?

MR. COLEMAN: Oh, something like February 1st of 1998.

CHAIRMAN ANDERSON: Yes.

MR. COLEMAN: At least I find that suggestion appealing, given all we're trying to cram in and get done.

ASSEMBLYWOMAN MARTINEZ: Yes, it makes sense.

CHAIRMAN ANDERSON: May I suggest that we, since we're trying to get the first term in effect on April 1st to make that March 31st.

MR. COLEMAN: Sure. Yes, I don't have a problem with that. I don't have any problems sort of --

MR. PUGH: That's no problem.

MR. COLEMAN: -- noting them as interim terms and, --

CHAIRMAN ANDERSON: Yes.

MR. COLEMAN: -- you know, putting some date on.

CHAIRMAN ANDERSON: Yes. Okay.

All in favor?

VOICES IN UNISON: Aye.

MR. HEATH: Mr. Chairman, you might want to ask if there's any comments on that proposal.

CHAIRMAN ANDERSON: Yes. I'm sorry.

Any comments on that?

There being none, so ordered.

Next.

MR. COLEMAN: The provisions of the Bylaws, which is somewhat standard in corporations, require reelection of all officers annually.

CHAIRMAN ANDERSON: Um-hum.

MR. COLEMAN: Now it's probably appropriate. But I don't think it always sends the best message.

I could certainly -- I mean this is a very fine point, but I certainly would not mind having longer terms for the election of officers.

ASSEMBLYWOMAN MARTINEZ: After the first start-up period, yes.

MR. PUGH: Sure.

MR. COLEMAN: Well, I don't know. I mean we're sort of

micromanaging the details at them. I don't know if we need to change the rules.

ASSEMBLYWOMAN MARTINEZ: Well, we're just --

CHAIRMAN ANDERSON: Every three years.

ASSEMBLYWOMAN MARTINEZ: -- keeping in mind that it's a start-up period that we might find that it's appropriate at that point. But going down the road, it probably would be better if they were able to be there longer.

MR. COLEMAN: I mean generally if people need to be discharged, you don't wait for the annual meeting. And if they don't, why wait.

MR. SALTMARSH: Mr. Chairman?

CHAIRMAN ANDERSON: Yes.

MR. SALTMARSH: Once, again, I don't know the feeling on this issue of the people who have drafted these documents.

This is one of them, as Mr. Coleman suggested, that is getting into the management and moving away from the governing boards themselves as policymaking bodies.

And while this Board might make a recommendation on it, I think we're going into a gray area to try to impose the Oversight Board's will at the level of management of officers by the governing boards.

MR. COLEMAN: Why don't we just ask the trustee to reconsider that. It's fine with me.

MR. FREEMAN: I'm embarrassed if these Bylaws suggest that there be an annual renewable of the management.

I somehow had the impression that we were speaking of the officers of the Board.

MR. PUGH: Right.

MR. FREEMAN: But if your intention was to go beyond the president and vice president of the Board and get into the working people, we can't recruit.

And I don't think that was your intent.

MR. SALTMARSH: Oh, we're referring only to the officers on the Board itself.

MR. PUGH: Yes, right. The officers of the Board itself.

MR. FREEMAN: Yes, then that's entirely up to you all.

MR. PUGH: Yes.

MR. SALTMARSH: Yes. Then I withdraw what I had said. I think that is back within the governance scope.

CHAIRMAN ANDERSON: I have a question to raise.

The boards of the ISO and the PX, as recommended, contain some of the same people. Are their interests intertwined to that extent so that we could have that same people on the boards, on both boards?

MR. FREEMAN: Sir, all I can say is that we've had the same people, some of the same people on both the advisory

committees. And their expertise has been extremely valuable.

There is a religious belief that the Power Exchange and the ISO should be separate. And we've tried to be faithful to that.

But it just strikes me that there is a critical mass of talent of people that have worked together and that have knowledge.

And if the classes want to nominate the same person for each board that I would urge you, in your discretion, to permit it. Although we certainly shouldn't have a majority that's on the same.

And I think that it's a minority.

MR. PUGH: I was going to say if you allow that to occur, we might save a whole bunch of dollars and just have one organization.

MR. FREEMAN: Well, you just have one trustee. And I hope that saves you some money.

[Laughter.]

MR. FREEMAN: Although Ms. Martinez might say we could do with one less.

[Laughter.]

MR. PUGH: And if you had the same bodies on both boards and end up totally complementary with each other, it wouldn't make sense to have two boards.

MR. FREEMAN: That's correct.

MR. PUGH: So I mean your comment, may be it is correct that if we structured it so that you couldn't have a majority of the same individuals serving on both boards, that you would, at least, have some independence between the boards and therefore work it out.

I was trying to envision what conflicts could arise between the two entities and their operation as to whether or not somebody could be wearing two hats and have a real problem with himself or herself. But I'm not sure.

I couldn't quite figure out where that would fall apart.

ASSEMBLYWOMAN MARTINEZ: I think it's just proper caution to ensure that, even if that might happen, that at least by not allowing a majority, we've created some kind of a failsafe for it. Then if we have to deal with it later on, we can. But at least we've put something in place, a safety net, if you will.

MR. FREEMAN: Mr. Chairman, there is a code of conduct that I think also --

CHAIRMAN ANDERSON: Yes.

MR. FREEMAN: -- is relevant to this.

CHAIRMAN ANDERSON: Is there any comment from the audience?

Yes.

MR. FREEMAN: Somebody on both boards, I guess.

[Laughter.]

MR. FLORIO: Yes, sir. Mike Florio from TURN.

I think you may have a problem with some of the -- at least the customer classes where there are very few people that have been involved in this process.

I mean there are -- essentially there are three seats that are designated for residential and there are only two human beings who have been involved in this process.

So if you have an absolute bar on serving on both, we'd have a problem. But I'm --

CHAIRMAN ANDERSON: Do you have a problem with the majority?

MR. FLORIO: I haven't run down the list to see how many -- It seems like there's some overlap. Whether it rises to the level of half, I'm just not sure without counting up.

I mean, the IOUs it's complete overlap.

The munis, there's no overlap.

Nonutility generators, there's quite a bit of overlap.

Some among the end-users.

The other problem I see is: Suppose each class nominates its people and you end up with one too many on both boards, who's the one that has to give up, so that actually implementing it is a little bit difficult. But --

MR. SALTMARSH: Mr. Chair?

I think Mr. Florio has implicated what in my mind is a very real issue in trying to work this proposal.

If it were put into the governing documents, we would be in a position where, with staggered classes, we might have incumbents on the board who then block certain nominees from coming forward.

I think this might be a different issue in the real world for different classes, different to one class than it is to another.

And the directors of each corporation are going to be subject to the normal duties of directors of corporations everywhere of having an undivided duty of loyalty to the corporation if there did turn out to be a conflict of the interests of these two corporations.

I think, in dealing with this issue, this policy of not sharing a majority of board members, it may be a very valid policy.

But to the extent that the selection of board members for future vacancies is amended to bring a ratification role to the Oversight Board, perhaps that would be an appropriate policy for the Oversight Board to have so that on more of a case-by-case basis you could consider what the impact would be on a class.

Because I think we get into a difficult area if we try to write it down and such a way that says certain classes might not

be able to come forward with particular people as nominees.

ASSEMBLYWOMAN MARTINEZ: And at the same time it's, with all due respect to Mr. Florio, I think sometimes what happens is there's a representation that there's only certain persons that represent a certain class when, in fact, there's maybe a greater body out there.

And wouldn't creating those possibilities then allow us to find other persons?

I mean I really think you discourage that to the extent -- I think the reverse of what you said is going to happen.

I think people who might have participated in this venue and who would like to participate are necessarily blocked out by those that have long-established turf, notwithstanding, you know, their ability to represent. So I think it's quite the opposite of what you say.

MR. SALTMARSH: Well, we would be in a situation where, for instance, if the same class had a vacancy occurring simultaneously, that the class -- or, indeed, two different classes who, for some reason, they're not precluded from nominating the same person on one board to represent one class and on another board to represent another, since these are individuals represented, we would have to define a rule that precluded that from happening simultaneously for two different corporations.

Whereas, if it is a policy at the Oversight Board level,

the Oversight Board would know if this came forward from two corporations, rather than having the corporations try to coordinate with one another and keep track of who was on the other board before they could make a nomination.

I'm only worried about the workability of trying to write a rule into one corporation's bylaws that would force that corporation to predict who might be coming forward simultaneously in nomination from another corporation.

MR. COLEMAN: Boy, I don't have a good -- maybe that's why we tried to retain some authority here on the ultimate election of directors.

CHAIRMAN ANDERSON: Well, I'll pass on that, because -- and maybe we, on the Oversight Board, could have an understanding that we would approach the policy of not having over 50 percent on the board overlap. And I think that's a good way to do, it because of the counsel's recommendation that you'd have to have interlacing Bylaws.

MR. SALTMARSH: I'm merely worried that if you have an extra person and you have rule in each corporation's governing document that you cannot have that, then you get in the situation of having to reconcile as between the corporations' rules, which one the person's ineligible to be on.

Whereas, if the Oversight Board is exercising a ratification, the Oversight Board can do that in its procedural

discretion on that policy.

CHAIRMAN ANDERSON: Okay. Thank you. Sobeit.

MR. HEATH: So, Mr. Chairman, then we'd write that up as a policy of the Board with 50 percent, and that's your directive to Staff on that?

CHAIRMAN ANDERSON: No, no. No.

No. Yes.

MR. PUGH: The policy for our Board.

CHAIRMAN ANDERSON: For the Oversight Board.

MR. SALTMARSH: Right.

CHAIRMAN ANDERSON: Yes.

MR. PUGH: Right.

CHAIRMAN ANDERSON: For the Oversight, right.

MR. SALTMARSH: Thank you, Mr. Chairman.

MR. PARKER: Mr. Chairman, my name is Ross Clark from R and B Associates. And I'm one of the nominees for the Power Exchange.

But one thing you might consider is the fact that not only are the same people sitting on the different boards, but you also have the same affiliations. In some classes that's unavoidable, such as the IOU perhaps, the municipal utilities, and so forth.

However, you get to other classes, such as the agricultural end-users, and I'm not singling one out, but they

have people from different organizations on each of the different boards.

A policy that you might suggest is not to limit the same people sitting on the same board or, indeed, even in the same organizations, but perhaps to limit the fact that no officer of the board shall come from the same organization.

For instance, a chair or a vice-chair of each of these governing boards. So that if your problem is control from a particular organization, I don't think that would go away if you have two people, one from the ISO and the PX, in the same organization, you still have the same problem.

So what I would suggest is perhaps you have the officers cannot serve from the same organization from each board.

CHAIRMAN ANDERSON: You run into the same problem there.

MR. PARKER: In other words, what I'm suggesting is that if you have the same IOU people -- and, again, not to pick on the IOU class, but they've nominated the same people for each board, merely by saying someone else from those organizations, because that's limited to three as it is, someone else from those organizations, your problem still does not go away.

What might go away is perhaps the officerships or some other --

CHAIRMAN ANDERSON: Sure, sure.

MR. PARKER: -- exercise and control the boards.

MR. SALTMARSH: It is a concern in drafting terms because of having two different corporations and having a corporate document for the Power Exchange, the California Power Exchange Corporation, that says you can't be an officer on this corporation if you're affiliated with any officer on the other corporation.

We can look into that further to see how awkward we think that issue is and make a recommendation back to the board.

MR. PUGH: I don't know. It would appear to me that the selection process of an officer in those board -- corporation with the number of bodies you've got involved would be somewhat self-policing themselves unless they really decided that was the proper person to do it.

MR. PARKER: That was really my intent in throwing that out.

MR. PUGH: Yes. You get an awful lot of votes there for that --

CHAIRMAN ANDERSON: Thank you.

MR. PUGH: -- to happen in both situations without somebody --

MR. PARKER: Whether you'd want to codify that is up to you, but that's a suggestion. Having dealt with multi-faceted boards myself, that usually is the effect, but not the real --

CHAIRMAN ANDERSON: We'll watch it from the Oversight Board. Thank you.

Further questions, further suggestions?

MR. PUGH: Erik, was my comment today on item 18, Section 18 on interested persons cleared up? Did you talk --

MR. SALTMARSH: I think it's being cleared up by just drafting comment.

MR. PUGH: Okay. That's what I thought about later. I thought it might save us a lot of money because none of the governors could take any money.

MR. SALTMARSH: I am passing it along as a drafting consistency comment, and I think if it comes up within that --

CHAIRMAN ANDERSON: Just want to make sure it got --

MR. HEATH: Yes, Mr. Chairman, just a couple other matters.

In the last week we had received numerous correspondence as a result of the filings that the Board requested. Part of the concern that's been raised in those filings is that the various classes and those who are entitled to participate in those classes have not been notified by the class. In fact, these nominations are going forward.

I think the Board should consider, in its review of these Bylaws, of how the entities are identified, are entitled to participate in those various classes.

I've gone over the Bylaws. I cannot discern how, in fact, one becomes a member of a class and who notifies you if, in fact, you are eligible for that class.

And we do see references throughout the document that the secretary of the ISO board and the PX maintain lists, but we don't know how those lists are prepared.

And I think that we should get some explanation from the trustee and trustee's counsel of how these entities are identified and those lists are updated. And so there's more of an open participation in those classes.

ASSEMBLYWOMAN MARTINEZ: Well, also specifically as it applies to residential, it does severely restrict residential participation if it's only those persons or entities that have participated in the regulatory process twice in each of the two years prior to their being eligible to serve.

And it seems that, if you look at residential and think of it in the broader sense, I mean residential might well be represented by somebody from a senior citizens' group or any other number of other residential users, and yet -- I guess Mr. Florio's concern would come home to roost if you used only this as a parameter for allowing residential end-users. And that's true of most of the end-user groups.

If you look at the end-user categories, they're restricted by those who participated in front of the Public

Utilities Commission.

Let me tell you that when I worked for an outside entity that appeared in those proceedings, one of the things we knew is that we were a very rare breed, indeed, because of the amount of overhead it cost our company for us to participate, that even though there might have been those that should have been involved as an end-user group, they were not because they didn't have the economic means to do that.

It doesn't mean they weren't well qualified and they shouldn't be allowed in that venue, it's just that they didn't see that process as working well for them.

So I think that when we look at the end-user groups entirely, specifically in residential, that we really tie our hands by limiting it specifically to those persons who had been participating in front of the Public Utilities Commission over the last two years and requiring that they be in two different proceedings.

MR. COLEMAN: Mr. Chairman, I think it's -- I think this is one of those extremely important issues that maybe we cannot put down in the Bylaws in detail.

And, in essence, maybe what we ought to do is satisfy ourselves that the Bylaws will encourage the corporations to determine what the right classes are and encourage everybody to come forward, but ultimately rely on the fact that we will have to

hold public hearings on the candidates, and will have an opportunity then to hear from the affected classes to determine whether or not they believe they're represented, as one of the issues that would clearly come up in a hearing.

ASSEMBLYWOMAN MARTINEZ: But the problem is that as they are currently structured, these Bylaws, as they pertain to the residential class, would mean that you wouldn't necessarily even be able to pool or poll those people who might be left out.

The list that -- I think it's easy enough to go to the Public Utilities Commission and find out who's appeared before them and in what venues over the last couple of years to qualify, but then you're only asking those people who would already be included in this class if they thought that was fair.

You would not be asking, for instance, your senior citizens' groups who might think it was very important to participate --

MR. COLEMAN: Yes. But, I mean, you know, the other problem is that the other way to get around it is to disqualify homeless people. Therefore, everybody else is in the residential class by definition.

[Laughter.]

MR. COLEMAN: I mean seriously, yes, it is an enormous problem to try to describe --

ASSEMBLYWOMAN MARTINEZ: It is. But we've taken a

different extreme. I don't think we need --

MR. COLEMAN: Yes, --

ASSEMBLYWOMAN MARTINEZ: -- to go to your extreme, neither do I believe that this extreme works well.

I think that we ought to attempt to deal with the residential class in much broader terms than their appearance before the Public Utilities Commission.

Let me also tell you that I have seen advocates for residential users who are just not qualified to be here at all, but they were the only ones that happened to meet this criteria of appearing before the Public Utilities Commission.

I think that this is just so limiting that we're not going to even get a pool of good people who might want to participate and that we ought to -- I understand --

MR. COLEMAN: Well, at that point we can, in effect, say we're not approving the --

ASSEMBLYWOMAN MARTINEZ: No. But -- excuse me -- the problem is that by adopting these Bylaws as they're written, even if we say we're not going to approve them, you're still only stuck with that limited pool. And the objective ought to be to expand the pool.

And it's so limited this way. I mean --

MR. COLEMAN: Well, why --

ASSEMBLYWOMAN MARTINEZ: -- I operated in that venue

for about 17 years. And let me tell you that during that time we know that the participants were very few in number. And they certainly were not reflective of the talent or the people that ought to be there. They were just reflective of the people that had the dough to get there.

MR. COLEMAN: Yes. No, listen, I think you're raising a good point. Maybe the best solution is to suggest back to the trustee that they could improve the language there to --

ASSEMBLYWOMAN MARTINEZ: That would be --

MR. COLEMAN: -- to ensure. And then we'll see what happens, because --

CHAIRMAN ANDERSON: Find some way to expand that.

MR. COLEMAN: I don't feel up to a drafting session.

ASSEMBLYWOMAN MARTINEZ: No, no. I feel fine with that, too. As long as we're dealing with all end-user classes, I think that that's something that we need to look it up in --

MR. FREEMAN: I have the privilege of saying that I agree with Ms. Martinez, that she has a very good point there.

ASSEMBLYWOMAN MARTINEZ: Thank you, Mr. Freeman.

SENATOR PEACE: Mr. Chairman, I'm Steve Peace, a Senate nominee --

ASSEMBLYWOMAN MARTINEZ: No. He's Steve Peace.

SENATOR PEACE: -- in John C. Peace's stead.

Your Honor, subject --

CHAIRMAN ANDERSON: Visitor.

SENATOR PEACE: Your Honor, the subject matter in which I would also like to concur with Assemblywoman Martinez' concern. I think that the Board also needs to direct the work product to be altered in such a way as to assure that more than one nominee for each qualified position comes before the Board.

To have the authority to approve from a pool of selections in which there's no choice is to, in effect, take away the authority of the Oversight Board to make the nominations.

So I would hope also that the Board would chose to direct Staff to change the work product to require that there be choices for the Board to select from in making the appointment.

The intention of the legislation was clearly to have the Oversight Board select the ISO and PX actual governing boards. The intent was not to default that decision to a group of private folks who had been meeting without any public scrutiny.

And while I applaud their work product and think they've done an extraordinary job in getting us to this point and I'm not critical in one iota in terms of what they have brought to us, it does -- the work product clearly shows the natural human instinct to self-select. It's sort of the cloning problem. We tend to all want to clone ourselves. And --

CHAIRMAN ANDERSON: What would you suggest in the case

of the IOUs? Their companies have probably nominated --

SENATOR PEACE: In my view they need to nominate more than one person for each of the -- I mean there should be at least two people nominated for each position.

And this Board should have the opportunity to be able to look at their resumes and consider the arguments that are advanced for each of the nominees, and be able to select from the two.

To have a mere -- having been in the position many times to, as a Senator, to approve or disapprove of the Governor's appointments to various boards, I'm more than intimately familiar with the Hobson's choice that we're often left with.

And while it would be my expectation that clearly the various classifications, there'd be a preference indicated in terms of the options that are put before us. And my guess is that 99 percent of the time we'd probably come to a conclusion of going with those recommendations.

I think it's important that the Board -- and it's in the interest of those entities, too, that they have a second choice. It keeps us from being in a position in which the consequences of not approving someone means having to go to a second board meeting.

It's better to have: Here's our second choice, and giving us the opportunity to say, "We don't like your first choice. We'll go with your second choice," or forcing the agenda

to still a third meeting or second meeting.

ASSEMBLYWOMAN MARTINEZ: Well, what if those two individuals were already cloned? I mean certainly we've seen corporate culture --

SENATOR PEACE: They are likely to be. Right.

ASSEMBLYWOMAN MARTINEZ: -- so strong that we really are, in effect, looking at the same individual.

SENATOR PEACE: They are likely to be. And from a practical perspective, -- I mean one could say you need to have 50 for each position. I mean I just would at least like to have a choice.

I don't want to be in a position where, when this Board exercises its judgment in terms of approving or disapproving of an individual -- and, parenthetically, I think it's extraordinarily important that the Bylaws clearly reflect the fact that it is an appointment-and-selection process that is made by this Board, not merely an approval process. It's a very important distinction. And that those people do not begin to serve.

Unlike, for example, you three gentlemen who serve pending Senate confirmation. And you continue to serve until the Senate affirmatively takes up that action. That is not what the Legislature contemplated this kind of circumstance to be.

This Board, this Oversight Board, has the authority to appoint those members. And it is important that you keep the

distinction in the Bylaws so that nobody begins to serve until they've been appointed by two out of three votes of this Oversight Board.

And given that, at least having two options means that you're not --

ASSEMBLYWOMAN MARTINEZ: Cloning or cloning --

SENATOR PEACE: -- stuck in the situation of saying, "Gosh, we're going to have no choice but to either approve this person or look at it in the next meeting when they can come up for the second choice." At least there's, you know, an in-between option.

ASSEMBLYWOMAN MARTINEZ: Well, actually that was the discussion that we had, that there was a possibility that if they only nominated one individual and that individual was not someone that the Board would see in that position, that the Board would simply not approve.

And the language was adjusted in the Bylaws to reflect that it would be a recommendation to the Board which clarifies that they know they're coming to the Board for that approval, but the Board would not automatically rubber stamp.

Therefore, if they brought -- see, it was possible you could force them to bring more than one person. Maybe there's not more than one person in that class that they would want to have.

SENATOR PEACE: But they can certainly default. And

you can't force somebody to do something. It's that simple.

They could say, "We nominate this person, and we're not going to nominate anyone else." And then we'd have the option to then compel them to come to a second meeting if we didn't like that person. But a --

CHAIRMAN ANDERSON: Yes. I think some of our other discussion, too, was the question as to whether all of these classes are going to be in a position to nominate more than one body for the two different boards. There may not be that many people that are willing to do that. I'm not sure how many would come running to the front.

SENATOR PEACE: Well, and where that is the case, we're going to learn that. But Chairwoman Martinez has spoken about one of the specific classes where I don't think that's going to be the problem and where clearly the current language narrows, as opposed to broadens, the potential level of participation.

I might also say that I think it's also very important that in this area that these Bylaws make it clear that these appointments are at-pleasure appointments. And that should the Oversight Board have cause to and reason to remove someone, that they have the power to do that.

Thank you. I appreciate being able to interrupt the proceedings for a moment.

CHAIRMAN ANDERSON: Would you identify yourself,

please?

SENATOR PEACE: Senator Steve Peace.

CHAIRMAN ANDERSON: Oh, yes. Oh, yes.

[Laughter.]

ASSEMBLYWOMAN MARTINEZ: His clone.

CHAIRMAN ANDERSON: Senator, nice to have you with us.

SENATOR PEACE: Nice to be asked.

MR. PUGH: So that takes care of residential end-users for right now? Staff has direction on that?

MR. HEATH: We have the direction.

ASSEMBLYWOMAN MARTINEZ: I had not -- I had limited my -- that one to just residential end-users. I did limit it to all end-users classes.

MR. PUGH: All end-user classes? Okay.

ASSEMBLYWOMAN MARTINEZ: Thank you.

MR. PUGH: I see. They're all set in the same categories.

MR. HEATH: Assemblywoman Martinez, just so Staff has clear signals on this, you're looking at this for just the end-user classes or for all classes?

ASSEMBLYWOMAN MARTINEZ: I was looking at it for all -- for end-user classes only. I didn't know if anybody else -- that was the class I was occupied with.

MR. HEATH: That's fine. I just wanted to make sure.

MR. PUGH: Yes. It appeared the end-user classes were the ones that were tied back to the CPUC hearings?

ASSEMBLYWOMAN MARTINEZ: Um-hum.

CHAIRMAN ANDERSON: I'd like to ask for the Board's views on the Senator's suggestions.

MR. COLEMAN: I think they're very thoughtful suggestions. I think the issue of whether or not we should be presented with two candidates in all cases and that the duty of this Board is to choose those two candidates, I think puts this Board in a difficult position because the presumption is that we can make that choice. And I don't feel as comfortable making that choice as I do making a confirmation choice on a recommendation.

I also think that when you have to conduct that type of choice with a public hearing you ultimately wind up having to make a choice, where there's winners and losers, you ultimately wind up taking testimony about which is better, which is a slightly different type of testimony than taking testimony on whether or not the person is competent to do the job.

And I think I feel that the process itself may discourage qualified people from actually trying to serve on the corporation.

ASSEMBLYWOMAN MARTINEZ: I'm --

MR. COLEMAN: I just wanted to add: I do think the suggestion that the Senator made, that maybe the terms of the directors ought to be at the will of this Board is appropriate to

discuss.

ASSEMBLYWOMAN MARTINEZ: One of the points that he also raised is that if they only nominated one individual, that we would then -- and we did not choose that individual -- we'd find ourselves having to come back together to fill the vacancy.

Perhaps -- and I'm not completely comfortable with my own recommendation, but this might work -- what we do is, instead of asking them to give us two choices, that we ask them to still nominate two individuals --

MR. COLEMAN: For a back-up recommendation or something like that.

ASSEMBLYWOMAN MARTINEZ: -- for a back-up recommendation. And that way hopefully the second one will fill it. If you don't, they still don't. If it's somebody that we still would not appoint we still don't do it. But perhaps that would save some time and energy around it, and it wouldn't be necessarily winners and losers then. It would just be a default position.

MR. COLEMAN: Yes. Maybe -- I think I'm still comfortable viewing our role as trying to achieve at all times the best board possible. And I think I feel more comfortable doing that by dealing with single recommendations than trying to make a choice when I don't really feel I'm qualified to make that choice.

ASSEMBLYWOMAN MARTINEZ: Well, their single

recommendation would be their first recommendation. They would also have a secondary position.

And I understand the logic behind doing that, because otherwise we go with a vacancy.

The other part of it is that we can't -- we're hoping everybody's doing the best thing, but a city might have a conflict of interest that was not anticipated. I mean there might be any number of reasons. And that's just leaving the door open without having to bring us back together again.

So let them make their first recommendation and then have a second recommendation as well.

MR. COLEMAN: Yes. Although I --

ASSEMBLYWOMAN MARTINEZ: We still end up not choosing between the two. We make a decision based on whether the first person's qualified to be there or not. And if they are, we accept it and don't even view the second.

But in the event that we find that the first will not work for whatever reason, it allows us and them a default position. Then they don't have to go back to the drawing board and start their process all over again. So that might work well on both sides of the issue.

CHAIRMAN ANDERSON: Archer.

MR. COLEMAN: Yes, I think practically speaking what you're suggesting is really appropriate. I'm not sure we need to

place it in the Bylaws. I think we can just state as an Oversight Board that "We would appreciate that you would have back-up candidates available in case we don't approve your primary candidate."

I don't feel that's a matter of the Bylaws.

ASSEMBLYWOMAN MARTINEZ: Well, actually that's a good idea.

MR. PUGH: Yes. Well, I think that's within our purview of how we've restructure, not that the Bylaws require them to do something, but in the same policy we had made earlier, the type of decisions for how we're going to operate with regard to filling vacancies and handling that. And --

ASSEMBLYWOMAN MARTINEZ: So we would stipulate that when we send them the letter asking, inviting them to --

MR. PUGH: Right, yes. And I think that would lead into the other question I had, which I think was brought up on the at-will concept, which the Senator raised, in that the Bylaws currently don't have -- or at least I didn't find it when I read through it -- a provision for removal of a governor either for or without cause -- with or without cause, either one. I didn't see provisions on that.

And I think if we had a provision in there that a governor was removable for cause by the Oversight Board, along that line.

CHAIRMAN ANDERSON: Mr. Freeman.

MR. FREEMAN: Mr. Chairman, I completely respect the authority of the Oversight Board to put this in the Bylaws. And we'll faithfully reflect it and argue for it before FERC.

But my conscience requires me to say that I think that this is the killer provision as far as FERC is concerned, that in terms -- it's going to be very difficult to defend the independence of the ISO and the Power Exchange if these governors sit with the power of the State's Oversight Board to remove them at will.

Certainly that's a policy question. And I can understand going that way, and, you know, I'll fight for it. But my conscience tells me that that's one thing that might be the most difficult to persuade FERC on, and that's on the advice of counsel that have dealt with FERC. I just felt I needed to say that just so that the bait would be full and you'd have every -- it's not necessarily a personal point of view. It's just that I think that's, in the circumstance we're in, that that's one implication of it.

MR. PUGH: That would be in the event of if we were doing it without cause, just that our --

MR. FREEMAN: That's right. Certainly you could remove for people for cause, but --

MR. PUGH: For cause, yes.

MR. FREEMAN: -- the at-will part, I think would be the most difficult thing to defend.

SENATOR PEACE: Mr. Chairman, you have to deal with the parameters of what things you can do, what things you can't do.

What is before you is an option of either overtly putting into the Bylaws an at-will language or being silent.

The Statute gives you at-will authority. You don't have the capacity to give away that authority. If you were to attempt to give away authority, that would be a problem with the Legislature. And that's something I think we've had some conversations with in terms of Staff. It is probably wise advice from Mr. Freeman to be silent insofar as the Bylaws are concerned with respect to this issue.

MR. FREEMAN: Right.

SENATOR PEACE: But it is important for the parties and members to be aware of the fact that the legislation clearly makes you the appointing power.

There are some practical problems associated with not having that being the case as well.

For example, intrinsic to the -- both the ISO and the PX working is the participation of the municipal utilities. If the ISO is not viewed by the Internal Revenue Service as meeting their requirements with respect to being a public entity, the municipal

utilities will ultimately find themselves in a circumstance where their existing debt, their existing bonded indebtedness will be disqualified for tax-exempt status.

You gentlemen are the only thing that stands between SMUD, LA Water and Power and every other municipal utility and the IRS disqualifying for tax-exempt purposes their current debt structure.

So it is extraordinarily important that, while we're concerned about one federal agency, we don't lose sight of the ultimate federal agency.

[Laughter.]

MR. PUGH: Might I suggest you approach it this way.

I'm still somewhat uneasy that there isn't some provision in the Bylaws for removal of a governor for cause. It could be done within the Bylaws by an 80-percent vote or a two-thirds vote of the governing body subject to approval by the Oversight Board --

SENATOR PEACE: Yes.

MR. PUGH: -- with regard to that removal.

MR. FREEMAN: Well, Mr. Pugh, my comments -- I just presume that this governing board will always have good cause.

And the at-will aspect of it is what I was saying would be the most difficult to defend.

MR. PUGH: Yes. Well, you don't have good cause set

forth in the Bylaws as a provision for removal of a governor. And I've found in the past if you don't have it in there, you can have yourself some real fun trying to get rid of a governor who's a problem child if that occurs, or has a conflict or won't own up to it, without some proceeding or provision within the Bylaws to do that.

MR. SALTMARSH: Mr. Chairman, members, while I agree completely that the Bylaws, as drafted at the moment, do not have any provision in them that speaks explicitly to the power or role of the Oversight Board in removing directors, I would point out that in Section 7 under, maybe what's not the obvious heading, "Vacancies," there is a provision for the governing board itself to remove a director with or without cause by an 80-percent vote of the governors then in office.

MR. FREEMAN: I'm not sure that satisfies --

MR. SALTMARSH: It's not the same issue, but I think it speaks to the issue --

MR. PUGH: Oh, I'm sorry.

MR. SALTMARSH: -- that was implied as to whether it could be done --

MR. FREEMAN: If it's in the law, it's in the law, like you said.

MR. PUGH: Yes. Well, I'm sorry I missed that, Erik.

MR. SALTMARSH: -- by the Board itself.

SENATOR PEACE: Can I ask counsel a question?

My recollection is that the Statute does not have a term for the governing board members; is that correct?

MR. SALTMARSH: The Statute does not set a term. It uses a phrase that one thing to be determined by the Oversight Board is the terms of service, --

SENATOR PEACE: Right.

MR. SALTMARSH: -- which is not assumed to be synonymous --

SENATOR PEACE: So if the Statute does not give a term, then the term is to be determined by this Oversight Board?

MR. SALTMARSH: Yes.

SENATOR PEACE: So if this Oversight Board is silent as to length of term, then is it not axiomatic that each of the appointments the Board ultimately makes, absent any other action by the Board establishing a term, is an at-pleasure appointment?

MR. SALTMARSH: I'm not sure if it's axiomatic. I --

SENATOR PEACE: Well, if this Board hasn't established a term, --

MR. PUGH: Well, but then that --

SENATOR PEACE: -- how could you come to any other conclusion?

MR. PUGH: Well, but if we don't establish a term, then it would require affirmative action by us each time we desired --

or someone desired to restructure the Board, --

SENATOR PEACE: That's correct.

MR. PUGH: -- in calling somebody in and saying, "Well, your term's over. Out of here. We're going to get somebody else."

SENATOR PEACE: That's correct.

MR. PUGH: The way we've structured it basically is a rotating three-year term for all Board members, not to exceed 12 years total.

SENATOR PEACE: Okay. Then if you adopt -- a way to propose an instruction, if the Board ultimately adopts those terms, then once you adopt that, not as the governing board Bylaws, -- I mean I don't know -- I mean that's a policy.

I don't know how you're structuring the element in terms of the Oversight Board. I mean that's a policy of the Oversight Board. And it needs to be a policy.

If the Oversight Board needs to be able to, on its own initiative, revisit, it may say, "Well, you know, we decided three-year rotating terms -- we've changed our mind. We want two-year terms" or "We want four-year terms" sometime in the distant future.

And the only question is then what language you use when you establish those three-year rotating terms. They usually can be an at-pleasure appointment, just as your appointment is.

And it would seem to me to be somewhat odd if the Oversight Board were at-pleasure appointees, in other words, able to be withdrawn by the appointing power only to have them to appoint people that couldn't be withdrawn. That's the way, you know, public policy gets out of hand in this when we move down the line.

We're dealing with situations that are the crash-and-burn, not likely to occur kind of environment. But I think it's important for the Board to maintain its authority and not inadvertently give away its authority that the Legislature gave to this Board through the adoption of these policies or these Bylaws.

There are a number of issues which we are wiser to be silent on, given our responsibilities with respect to filings with FERC. And we have plenty of time to come back and deal with things down the line. And I expect ultimately our relationship with FERC to be very cooperative. I don't expect any serious problems as we move forward, at least in the initial stages.

But going beyond being silent and adopting objective language that gives power from this Board away to that board is what I want to caution against.

Because, keep in mind, whatever work product came to you by way of recommendation came as a consequence of private, essentially private meetings involved with the beneficiaries of the transfer of power in making the recommendation to you.

And that's precisely why you're here, is to make sure that doesn't happen.

MR. FREEMAN: Well, Senator, Chairman, trying to be helpful, I wonder if the decision was to appoint people for very short-term, through January 1. And then if a sentence were added that the terms were subject to revision at the pleasure of the Oversight Board, would that do it?

SENATOR PEACE: Yes, I don't -- actually there's a term of art that is used in statutes with respect to terms that are nonpleasure and terms that for at-pleasure terms. I don't see that as such an issue.

MR. SALTMARSH: Yes. I would like to speak for the benefit of this question to all the Board members.

I'm troubled by where we would go if silent on this issue in terms of a presumptive implication, partly because the nonprofit corporation-wide self contains what's generally a default if terms of office are not set forth in Articles or Bylaws. And so we would get into the question of is that presumption effective or did --

SENATOR PEACE: Well, what is that default?

MR. SALTMARSH: -- or if -- it's one year with a couple of subsections that if something else happens it can be three years or it can be six years. But, generally absent, it would be one year.

SENATOR PEACE: I don't see that as a problem. I mean that if we were silent temporarily, that's consistent with what our intention is anyway.

ASSEMBLYWOMAN MARTINEZ: The discussion was is that we would need to have some stability on the Board in the outset, and that we could not really create that if, in fact, we were talking about one-year periods.

So there was a great deal of -- and at the same time we thought we needed some flexibility, so the language that we visited had to do with the initial appointees.

SENATOR PEACE: But my understanding is that if the Oversight Board in March of next year, or in February, felt that the IOUs were manipulating the process and, indeed, the ISO would be experts now and wanted to do something about that, if we've locked in --

ASSEMBLYWOMAN MARTINEZ: Well, see, we left that -- that's exactly what we did is we left that door open. We made sure we knew -- the discussion earlier was that we might want to fine tune it after the first year, that we might find that it was an improper balance. So we left that open before cementing in the terms.

So there was language that initially talked about the first year, and then there was additional language that talked about subsequent years.

SENATOR PEACE: As long as that doesn't create a problem with the FERC, that's fine with me. But --

ASSEMBLYWOMAN MARTINEZ: Well, we understood that FERC --

SENATOR PEACE: Go ahead.

ASSEMBLYWOMAN MARTINEZ: I'm sorry. Thank you.

We had understood that FERC saw our role. At least they agreed that the Oversight Board would be here to create, or to put this thing together. And they accepted our authority to do that and to fine tune it.

What was not clear from FERC was how long they saw our continuing role. We saw it as indefinite. They saw it as coming to an end, although they were not clear as to what that would be.

So we were fairly certain --

SENATOR PEACE: But, if for no other reason, FERC ultimately -- I mean, the reality that there is a lot of the little potential pitfalls in this process. We're substantially ahead of FERC on in terms of discovering things. Not that we're any brighter than they are, we just have moved further along the discovery path.

They're going to discover that the continuation of the Oversight Board is an absolute imperative for a number of reasons, not the least of which is one of our --

ASSEMBLYWOMAN MARTINEZ: Correct.

But what we did was we paid attention to FERC's thoughts on it, as well as the possibility that we might have, in fact, not structured it properly, and this is the trial --

SENATOR PEACE: It doesn't make any difference to me how you handle it, just as long as you don't give power away that you can't get back.

CHAIRMAN ANDERSON: We put in the first term will expire on March 31st, 1998. And then we put in a provision that thereafter four three-year terms would be the maximum.

Is that correct?

MR. COLEMAN: Yes. With some early provisions that stagger the board.

CHAIRMAN ANDERSON: With staggering of the board.

SENATOR PEACE: Right. So you had initial short-terms to create the staggering.

CHAIRMAN ANDERSON: Yes.

MR. PUGH: One, two and three.

CHAIRMAN ANDERSON: Okay?

MR. FREEMAN: I think there's also a provision at the end of three years, the Oversight Board completely reviews the whole shooting match.

CHAIRMAN ANDERSON: Okay. Does that meet with your approval?

MR. COLEMAN: Yes. It still doesn't cover the sort of

-- the pure at-will issue.

SENATOR PEACE: I'm comfortable that silence is okay. Just as long as we didn't put anything in there that says, "These are not at-will appointments," I'm okay.

CHAIRMAN ANDERSON: Yes.

MR. PUGH: I would suggest that we make the modification in Section 7, however, on the removal by the governors' 80-percent vote that it has to be with the approval of the Oversight Board.

MR. COLEMAN: Okay. So the 80-percent vote is a recommendation --

MR. PUGH: Right.

MR. COLEMAN: -- to the Oversight Board for removal?

MR. PUGH: Yes, right. Okay.

MR. COLEMAN: Fine. I'm happy with that.

CHAIRMAN ANDERSON: Now --

MR. PUGH: I so move.

CHAIRMAN ANDERSON: Now --

MR. COLEMAN: Mr. Chairman, I have one other issue. Are you going to leave the Bylaws?

MR. PUGH: We have a motion on this, Mr. Chairman, --

CHAIRMAN ANDERSON: Yes.

MR. PUGH: -- on that change in Section 7.

CHAIRMAN ANDERSON: All in favor?

VOICES IN UNISON: Aye.

[Motion carried.]

MR. COLEMAN: Were you going to leave the Bylaws?

CHAIRMAN ANDERSON: No, no.

To the point that was made earlier, are we going to go through each class and propose a back-up candidate?

ASSEMBLYWOMAN MARTINEZ: I thought the agreement was that we would ask that in the letter that we wrote -- that we would not adopt it as policy -- but that in the letter that we wrote, when they nominated, that we would ask them to be prepared to have a back-up candidate so that if we did not approve the first candidate then we would not have to be delayed in --

CHAIRMAN ANDERSON: Okay. All right. That's good.

Do you want make a motion to that?

MR. COLEMAN: So moved.

CHAIRMAN ANDERSON: All in favor?

VOICES IN UNISON: Aye.

[Motion carried.]

CHAIRMAN ANDERSON: Okay.

MR. COLEMAN: If it's time to move to another section of the Bylaws now, --

CHAIRMAN ANDERSON: Yes.

MR. COLEMAN: -- I'm prepared to do so.

CHAIRMAN ANDERSON: Let's go on.

MR. COLEMAN: Article IV that deals with the committees of the Bylaws grant extraordinary powers to the committees and do so with a minimum membership of two, although with the caveat that these two people try to represent broad classes of people, even though they are recommended by narrow classes of people.

And I think to a certain extent I'm a little bit nervous, although I'm not exactly sure what to do with the notion of allowing the governors to create committees that have extremely broad powers, other than those that are explicitly reserved with as little a membership as two people.

I mean, on the one hand, they really need to have operating flexibility to appoint committees and get things done.

On the other hand, it does not strike me as sort of being in the spirit of the program here entirely. So I'm not exactly sure what to do about it.

I'm a little bit -- I find it a little bit awkward to try to have lengthy descriptions of committees and this type of stuff. But it seems to me, as the way I read this, there's a broad license to possibly either affect representation or affect reliability of the system by granting broad operating powers to a committee of two.

ASSEMBLYWOMAN MARTINEZ: Would there be -- maybe what we want to do is -- if that committee is limited as two in any two persons, it's conceivable that they could turn the whole thing

upside down pretty easily.

I'm wondering whether or not we ought to talk about those committees having representation from different classes or a minimum number of representatives from major classes, not from each and every class because then we would basically be doing the board over again. But I mean there ought to be, if you're doing auditing, there ought to be some balance there.

MR. COLEMAN: Yes. I mean I think there are clearly some committees where what you really want to do is you want to get your best board members. Auditing, maybe, is a good example. And I mean the auditing profession is the auditing profession. I'm not sure there's a substantial difference by class. Although I suppose there could be if you're trying to review how rates were set, or something like that, in the PX.

MR. FREEMAN: Mr. Coleman, does it help to point out that these committees all have just an advisory role. At least that was our intent. If the language didn't make that clear, we ought to make it clear.

I mean they would not have the decisionmaking power of the board. They would, you know, as a committee make recommendations to the board.

ASSEMBLYWOMAN MARTINEZ: But the problem would be I think, Mr. Freeman, even as an advisory board, if there were two parties of the same interest advising the whole body to move in

one direction, that might not work well. Then there would be no purpose to have the committee at all because then what would happen is that the larger committee would be looking back and scrutinizing each and every aspect of it.

MR. FREEMAN: Yes. We --

ASSEMBLYWOMAN MARTINEZ: I don't think that works well to create that kind of a situation either.

MR. FREEMAN: It may be faulty. But we also have these committees elected by a two-thirds vote -- the committee members have to get two-thirds of a vote of the board to get appointed to the committee.

ASSEMBLYWOMAN MARTINEZ: But how do you have a proper balance of that kind of committee if there's only two persons on there. Even if two-thirds are voting, when you have so many customer classes, to only have two persons on the auditing committee, I don't see how you get any kind of proper balance in that?

MR. COLEMAN: Mr. Freeman, I do think you're on the right track here. I think if these committees are advisory or if the committees are going to act, they have to act with the support or ultimate confirmation of the full board, then I think we've solved a lot of the basic problem I had.

I was just reading the language that said, "Any committee shall have the authority of the governing board," --

MR. PUGH: Yes. The initial appointment, Mr. Freeman, --

MR. COLEMAN: -- "except," so --

MR. PUGH: -- in Section 1 does that. Whereas the provisions for your individual committees, when they're set out, say they're advisory.

But the general language says, "Any committee you can appoint shall have all the authority of the governing board except," and then there's a limitation. But other than that limitation, they have full authority.

I think if all committees were made advisory, you wouldn't have that problem.

CHAIRMAN ANDERSON: Advisory committees have no --

MR. FREEMAN: Well, we have two different categories. The advisory committees are clearly advisory.

The other committees, we've ruled out what we --

MR. PUGH: Right. But in Section 1 itself the board has the right to appoint committees other than those committees which you set out in Section 2, 3, 4, 5, and any committee appointed under Section 1 has the full authority of the governing board except to do Items A through F.

So I think that's the -- that's the section that needs to be modified to provide that all of those committees would be advisory.

I don't know that you'd want a committee that's acting. Do you want a committee -- is there some reason a committee of two is going to be an active member --

MR. FREEMAN: It's a dilemma.

MR. COLEMAN: It is a dilemma. And you are the operator or the person with the operating experience, I'm not. We clearly need to delegate authority from the board in a way that it operates appropriately. And I truly do appreciate that.

On the other hand, I'm a little bit nervous of delegating the authority in such a way that almost anything can happen except what is listed explicitly --

MR. FREEMAN: Well, in view of a concern of the Oversight Board, we ought to give this some further thought that perhaps having an appeal to the full board by anyone who's unhappy with any decision of this group. But we do need to have smaller groups that have got the authority --

MR. COLEMAN: I agree.

MR. FREEMAN: -- to function.

MR. COLEMAN: I agree. And maybe the --

MR. PUGH: Was there some --

MR. COLEMAN: -- real answer or maybe another approach would be to take those committees that are not advisory and those committees that would not be subject to a full board and explicitly put them in the Bylaws.

Then if you need to create a new committee, then you're going to have to go through the Bylaw modification process if the committees are going to carry that kind of power.

MR. PUGH: Sure.

Is there a magic number -- reason for the number two?

MR. SALTMARSH: It's two or more, first off.

MR. COLEMAN: I was just taking the --

ASSEMBLYWOMAN MARTINEZ: But it could be two.

MR. COLEMAN: -- the worst case, in my own mind.

MR. PUGH: Yes. I just wondered why, out of the 25-person board to have two with the authority, it's an executive committee, for example.

MR. FREEMAN: There's nothing magic about two.

Would there be more comfort if it was changed to three or more?

MR. COLEMAN: No. I think the same issue --

MR. PUGH: The same issue arises.

MR. COLEMAN: I mean I think the dilemma here is on the one hand we've taken such great pains to very carefully balance the board in terms of all the interest groups, and now we're creating an opportunity in the Bylaws to create fairly powerful committees that are "supposed to pay attention to the balance but are not required to in their membership."

And I realize it's a problem because there are clearly

going to be some operating committees that you're going to want to have to move on pretty quickly.

MR. FREEMAN: I guess we felt the two-thirds vote to create the committees would build in the balance, but maybe that's not good enough.

ASSEMBLYWOMAN MARTINEZ: The only reason it doesn't create the balance is because you have too many different types of entities to get a balanced representation.

MR. COLEMAN: Yes. I guess I would feel more comfortable that if you really needed, you know, some form of operations committee or something like this, that's going to need to act quickly and rapidly to conduct the businesses of the corporation, that we could explicitly provide for that in the Bylaws. And then we could walk around it and sniff it and understand what it is; as opposed to explicitly providing in the Bylaws that you can have any committee do anything except.

That's the only suggestion I have. And it may not be a workable suggestion. I'm just a little bit nervous at the amount of authority granted in the Bylaws for committees to act, I think is my point.

CHAIRMAN ANDERSON: Why don't you come up with a proposal on that?

MR. HEATH: We'd be happy to, Mr. Chairman. We'll work with counsel from the trustee, and we'll come back with a proposal

on that.

CHAIRMAN ANDERSON: Okay. Any other suggestions on the Bylaws?

MR. PUGH: Yes. Again, following up with my earlier comments about what our role is, it appears on the appellate aspects that the ADR provisions in the Bylaws totally eliminate any -- or make no reference to any rights of the Oversight Board or any appellate rights of the parties to the Oversight Board.

I know that's probably done in light of FERC's comments.

MR. FREEMAN: I think the Bylaws are out of date on that point. We were waiting for your discussion today.

I would suggest, though, that the Board might want to -- I'm not trying to evade it, but I just wonder if those ADR provisions really need to be in the Bylaws. I mean that's just a personal question.

I mean we want to change them to reflect your views, and we shall. But I just raise the additional question. I don't understand why they have to be in the Bylaws.

Well, we want the filing to reflect the Board's views.

MR. PUGH: Well, if you're going to follow the ADR process that you set forth herein, are you saying that because it's in the filing and not in the Bylaws that that's binding on all parties then that deal with or are a part of the ISO, that deal with the ISO, because it'd be part of the tariff?

MR. FREEMAN: Right.

MR. PUGH: Okay. Well, then I guess I don't care where it is. But I still, with regard to it, it's still needs to have the provisions with regard to the role of the Oversight Board as the appellate body.

And, again, spelling out. It's not in lieu of or in no way diminishes FERC's right on those jurisdictional issues which FERC has. Anything we decide, if we are the appellate body, is still subject to FERC approval and can be appealed to FERC.

CHAIRMAN ANDERSON: Yes.

ASSEMBLYWOMAN MARTINEZ: Right.

MR. PUGH: But I think we have a role to play in that process, as opposed to going merely from the arbitrator to FERC.

MR. FREEMAN: I want to be clear that we write it exactly as you want it. Would a party have a right to simultaneously appeal to you and to FERC, or do they have to wait until you decide?

MR. PUGH: No. They'd have to go through us first, would be my concept.

MR. COLEMAN: I'm perfectly happy with the concept. It'll be interesting to see what the outcome is.

MR. PUGH: Right.

ASSEMBLYWOMAN MARTINEZ: Perhaps the counsel can weigh in on this.

MR. SALTMARSH: I'm sure it is the opinion of the FERC, and it may be the correct opinion of the FERC that under current federal law issues of appeal that would be an appeal on, for instance, a compliance with the tariff or with the Federal Power Act by an eligible party would be directly appealable to FERC.

And I don't think FERC would accept that the State has a jurisdictional right to impose an impediment along the way to that.

FERC has, in its approved processes, regionally allowed for intermediate dispute resolution steps. But I think, as it related to a nonstate jurisdictional issue, if this is an appeal that related to the rate portion of a tariff being applied or something like that, that the Oversight Board and the State probably could not inject itself, absent a delegation of that from FERC.

MR. PUGH: Is there a specific FERC approval of the arbitration provisions that are set forth in the ADR resolution here that allows them to go to an arbitrator before they go to FERC?

MR. SALTMARSH: FERC has generally encouraged that FERC-approved tariffs have attached to them or affiliated with them an alternative dispute resolution mechanism and has --

MR. PUGH: And then why can't we be part of that?

MR. SALTMARSH: There's no reason we couldn't be. The question is: Is there a body of state jurisdiction in which we can assert ourselves to be, without requiring acquiescence from FERC --

MR. PUGH: But are we any different than an arbitrator?

MR. SALTMARSH: An arbitrator only gets that role pursuant to FERC approving the ADR mechanism.

MR. PUGH: But that's what I mean, Erik. If the arbitrator can get the role because FERC allows it, and we are acting as the arbitrator on a second step in the arbitration process, it shouldn't be any different.

MR. SALTMARSH: FERC can clearly approve a role for the Oversight Board in ADR.

MR. HEATH: Mr. Pugh, we have provided for the Board members in their red binders a current proposal from the trustee that discusses this. And if I may help you on this one, it begins right after the charts.

MR. PUGH: Yes.

MR. HEATH: It begins with the title, "Discussion of Oversight Board," --

MR. PUGH: Right.

MR. HEATH: -- "Excerpts and Transmittal Letter for March 31 Filing," being on page 10 of that.

Mr. Saltmarsh has been working with counsel from the

trustee on this issue trying to hammer out some language that might be acceptable.

MR. PUGH: Page 10 of that memo?

MR. HEATH: Yes.

MR. PUGH: Okay.

MR. SALTMARSH: I'm not sure if my role's been quite as active as characterized. We have received this from the trustee's staff, based on their perception of the Board's concerns.

I have not and the Board, no one acting on behalf of the Board, has yet gotten back to the trustee's staff as to specifically the Board's impression of this language.

MR. FREEMAN: And I think it's important that we get guidance from the Board.

MR. PUGH: Yes.

MR. FREEMAN: Unless it's a very specific issue, would a party have a right to go to FERC and appeal while the Board is reviewing something? Or do you want to assert yourselves in the chain of command. And we have to write it up the way you want it. And it can't be dubbed.

ASSEMBLYWOMAN MARTINEZ: I think the idea was that we would be in the chain of command, wasn't it?

MR. PUGH: Yes. It was my understanding we'd be in the chain. That was where I was putting myself --

MR. FREEMAN: That was the answer that I heard.

MR. PUGH: -- putting us between the arbitrator and the FERC filing appeal, if they wished to go to FERC.

Now I --

MS. WOOLF: Well, I think the problem you have with AB 1890 is that you serve as an appeal board for majority decisions of the Independent System Operator Governing Board, which implies that there has to have been a governing board majority decision.

MR. PUGH: That's correct.

MS. WOOLF: Of course, there could be a whole lot of other disputes arising under the title of switch- --

MR. PUGH: If you want to come argue to me about whether the rate tariff is applied properly or not, forget it.

[Laughter.]

MR. PUGH: I'm sorry. We haven't got enough time for that here, not to educate me anyway.

CHAIRMAN ANDERSON: Are you satisfied?

MR. PUGH: Well, as long as we're in the --

CHAIRMAN ANDERSON: Chain.

MR. PUGH: -- dispute resolution chain above the arbitration on those issues that we were given legislative authority to handle.

CHAIRMAN ANDERSON: Yes.

MR. PUGH: Okay.

MR. FREEMAN: Mr. Saltmarsh, is that --

MR. PUGH: Is that clear enough for you, Erik? Can we get there from here?

MR. SALTMARSH: I think so. And I'm sorry not to have put together more substantive briefings for you on this. I believe that this was about seven o'clock last night we got this one, maybe a little later.

In any event, my --

MR. FREEMAN: That's the middle of the day, isn't it?

MR. SALTMARSH: As it turned out.

My reading of this was, in fact, that it might propose a rule for the Oversight Board that is broader than -- in terms of participating in ADR -- that it's broader than that reflected in AB 1890 as to consideration of issues specifically that were governing board actions.

This suggested to me, if I read it correctly, quickly coming out of the fax machine, that the proposal was to seek an ADR role for the Oversight Board more generally in the ADR process. And I'd like clarification, because we have not --

MR. FREEMAN: Well, I think the language we used starts off saying, "As set forth in Sections 345 and 3(b)(9), Reg 90, a member of the governing board of the ISO has a right to appeal decisions of that Board, the Oversight Board. Upon receipt of such an appeal, the Oversight Board shall consider the decision so

appealed."

And then it goes on to where the decision to appeal affects the reliability of service in the State, whereas the Oversight Board has decisional authority.

I think that what we have there on the bottom of page 9 reflects what we're saying here.

MR. SALTMARSH: I agree. And I --

MR. PUGH: That was the secondary role in there with regard to reliability, I see, which is just ahead of that on page 8, to 7, 8 and 9. I haven't had a chance to read this. I'm trying to skim it right now quick like.

So it looks like we have two functions there. One is the reliability issue as much as -- not necessarily ADR questions.

And then the right under the ADR provisions, as I see it here, with regard to those issues that are set forth in the Statute.

But I think that would fit the --

MR. SALTMARSH: And also at the bottom of page 10 and continuing shortly from there, there's a role that is not defined that explicitly but suggests that -- and it was that I was referring to -- suggests that there may be a role for the Oversight Board --

MR. PUGH: Right.

MR. SALTMARSH: -- in the ADR process generally as it

relates to appointing arbitrators, et cetera.

And I was just suggesting that I felt this proposal both spoke to Section 335 of AB 1890, but also considered a more expansive role in ADR --

MR. PUGH: As I read it now, --

MR. SALTMARSH: It's kind of vague.

MR. PUGH: -- this basically responds to my concerns with where we should be, the Oversight Board should be with regard to the ADR process and those processes.

And I think it sets out what it ought to be. It's just now putting the language into the Bylaws to make sure we fit within the ADR provisions, or into the provisions of the ADR wherever they go, either by tariff or by law.

MR. FREEMAN: Thanks.

CHAIRMAN ANDERSON: Okay. Satisfied?

MR. PUGH: That's fine with me on that issue. I think that's my last Bylaw question.

MR. COLEMAN: I guess I have one other issue on the Bylaws I'd like to just discuss briefly, and that's the Section 2, entitled "Annual Report," on page 26.

And I think the sum and substance of my comments are the fact that, while this particular section does sort of specify how this nonprofit is going to account for things, it never once says we need an audit and it never once says "generally accepted

accounting principles."

I think what interests me here is that what we have is not a government agency any longer doing this business, but we do have a private, not-for-profit corporation.

And I think that if the citizens of California are going to understand what's going on eventually and whether or not rates are going up or going down, what's happening inside these companies, they ought to at least report in terms that are familiar with -- at least what the general public is generally familiar with.

And I would be very much inclined to insert the words "generally accepted accounting principles" someplace in there. Maybe up at the top.

I guess I feel slightly less strongly about requiring in the Bylaws that these are audited statements. I would certainly urge that they be audited, because I think it's much more appropriate for this thing to look as much as possible like a private corporation.

MR. FREEMAN: I think it should be there because we have it in the tariff which binds us, and we ought to take credit for it.

CHAIRMAN ANDERSON: B, "Such financial statements shall be accompanied by any report thereon of independent accountants"?

MR. COLEMAN: Yes. "Or if there is no such report," --

MR. PUGH: Our certificate stays there without audit.

CHAIRMAN ANDERSON: I would eliminate that.

MR. COLEMAN: It just strikes me in the long run that the better we report this thing, the better the public is going to understand it. And it's in the best interests of everybody to at least adopt more modern standards than what is traditionally adopted for government agencies in this particular case.

CHAIRMAN ANDERSON: All right. Include the terms "generally accepted accounting principles." And knock out "if there is no such report."

Does that satisfy you?

MR. COLEMAN: Yes. I'd be more than happy to have audits. I don't know what it's going to entail, but I clearly would like to have "generally accepted accounting principles."

CHAIRMAN ANDERSON: Okay. Any other suggestions?

MR. COLEMAN: That's all I have.

MR. PUGH: Oh, Lew, I know one thing. You talked in the amendment with regard to the role of the amending of the classes that required an Oversight Board under Section 3 on page 28.

MR. COLEMAN: Yes.

MR. PUGH: And I think any amendment to the Bylaws ought to come back to us.

MR. COLEMAN: You mean all Bylaw amendments should come back to us?

MR. PUGH: I don't know. Maybe we don't need that. We don't to amend committees, we don't need to amend -- be involved in the amendment to officers, and that kind of stuff.

MR. COLEMAN: And it seems to me --

MR. PUGH: No. I guess just any amendments to the classifications, the selection process, the nomination process would come back to us.

MR. COLEMAN: All amendments of that section?

MR. PUGH: Yes.

MR. COLEMAN: Yes. I mean we're entering really uncharted ground here. And I would suspect that there should be modifications of the Bylaws.

MR. PUGH: If we take Section 3, that should be adequate then for -- Article III, Section 3.

MR. COLEMAN: Yes, I think that's sort of my sense.

MR. PUGH: Yes, okay. Good.

MR. HEATH: Mr. Chairman and members, we're also not sure exactly what requirements FERC will have in terms of any amendments to these Bylaws.

FERC, in fact, may require that all amendments go back to FERC, at least for filing, if not approval.

At this point it might be advisable for the Board to go

ahead and request that matters that relate to this Board, all amendments come here, and then see what the FERC filing ultimately requires. And then we may also want copies of all those filings, too.

MR. PUGH: Yes. I'm sure FERC's going to make their own decision of what they want us to do or allow us to do. But we have to structure it from that standpoint first.

But I would hope that FERC gets the picture that we're not trying to be the end body. We understand where they fit. We're trying to be a body that is an overseer and intervenes in between to make sure that the interests that we're supposed to protect are protected as well.

CHAIRMAN ANDERSON: Okay. That concludes the review of the Bylaws.

MR. PUGH: Unless Staff has any questions on them.

CHAIRMAN ANDERSON: Yes.

MR. HEATH: We're fine.

MR. PUGH: Okay.

CHAIRMAN ANDERSON: Okay.

MR. HEATH: We have enough directives.

MR. PUGH: You don't need any self-made ones.

MR. COLEMAN: I mean maybe it's appropriate, because we have accomplished a lot here, to see if there's any comments --

MR. PUGH: Yes.

MR. COLEMAN: -- from the audience on anything that we ought to rethink, readdress.

MR. PUGH: Do they have anything that we haven't addressed.

MR. COLEMAN: Anything we haven't addressed.

CHAIRMAN ANDERSON: There being none, let's move on.

MR. PUGH: What's left on the Agenda, the interviews?

MR. HEATH: Basically we start there, yes.

MR. PUGH: John has a question on whether we're going to do a FERC filing.

MR. HEATH: I mean if I may make a suggestion on that, on the Power Exchange Bylaws, that you direct Staff to make the appropriate changes to conform with that. And then we wouldn't have to go through those.

I'd like to receive it as a motion, Mr. Chairman.

MR. PUGH: I would move that we direct Staff to coordinate the PX Bylaws and Articles with the same amendments and changes that we have suggested with regard to the ISO Articles and Bylaws.

CHAIRMAN ANDERSON: Any second?

MR. COLEMAN: Second.

CHAIRMAN ANDERSON: All those in favor say aye.

VOICES IN UNISON: Aye.

[Motion carried.]

MR. HEATH: Thank you.

MR. PUGH: John had a question of the potential of the Oversight Board doing a FERC filing that Senator Peace has requested. Shall we hear from John on that?

MR. ROZSA: Right. Actually this is consistent with the suggestion by Assemblywoman Diane Martinez earlier, that there are issues regarding the functions and role of the Oversight Board which is appropriate for the Oversight Board to respond to directly on.

There is some concern about whether the trustee, representing an entity subordinate to the Oversight Board, should be making representations to FERC about the Oversight Board itself, especially since you have a functioning, competent Oversight Board at this particular point.

It would seem like there are limited sorts of representations that this Board can make to FERC, and should, regarding itself. And that's easily separable and coordinated with the trustee's filing.

MR. COLEMAN: And you're suggesting that possibly we make a filing with FERC in response to their comments about this Oversight Board or that we try to carve something out of the filing that would come in from the trustee?

MR. ROZSA: No, no. I would say that the concept would be to take the language that the trustee has been working on, and

instead of having it come from the trustee that it come from the Oversight Board to FERC as to what FERC's -- I'm sorry -- have it come to FERC from the Oversight Board as to what the Oversight Board's view of its function and role is.

MR. COLEMAN: Yes. I mean I guess I personally sort of feel a little bit uncomfortable riding the head of the spear of federal jurisdiction here.

And my instinct is that if we are happy with the filings that are going in from the trustee, fundamentally, and those filings are more likely to create reasonable response from FERC, then I don't feel compelled, having never done a FERC filing myself personally and hope never to, to cause that to happen.

But I do think the point is that if by not doing something we are adding to the conflict between state law and federal law, and it's viewed that for state law purposes we need to do something, I suppose I'd look at it. But my instincts in terms of the substance here is to say that if we're happy with the Phase II filings from the trustee that we ought to leave it at that.

MR. ROZSA: We're probably not going to pass on the entire substance of the Phase II filings because of the 1600, or how many pages in counting now we have here of this thing.

So the only thing that really comes that we would have an interest in, apart from the Bylaws that we've been talking about,

is the representations about our functions.

So --

MR. COLEMAN: Well, I guess if we want to file because -- I guess we can respond to the order that is -- I don't know. I mean I don't understand whether or not we've passed filing periods or anything else.

MR. ROZSA: I'm sorry. You don't understand what?

MR. COLEMAN: My understanding is that FERC has sent down an order saying, "This Board has very little power."

And what we're attempting to do is just to use the March 31st filing, what I think are called the Phase II filings, to appeal the FERC opinion on the status of this Board.

MR. ROZSA: Technically I don't think it would be an appeal because I think the time to appeal that particular part of the decision has passed.

MR. COLEMAN: Has passed.

MR. ROZSA: It would be more on the order of clarifying who we are under the State Statute and what our foreseen role is going to be with regard to the institutions, and that this is consistent with representations in the filing and in the Bylaws, which are being filed themselves.

MR. COLEMAN: But I mean if it's already apparent in the bylaws, why go ahead and do it?

MR. ROZSA: Sure.

MR. COLEMAN: I guess is my question.

If what it is we want is already apparent in the Bylaws, aren't we sort of saying, "Hey, we really ought to conduct this battle" --

MR. ROZSA: Well, there are --

MR. COLEMAN: -- "in full armor"?

MR. ROZSA: -- statements in the Trustee's filing which put forward --

MR. SALTMARSH: If I may?

MR. ROZSA: Yes.

MR. SALTMARSH: I think probably the areas that we're talking about are not those provisions that are in the Bylaws, but language I think John is referring to that would be in the transmittal letter or compliance letter.

I have had separate discussions getting somewhat varying opinions from different Board members as to the -- what might be the benefit of the Oversight Board weighing in at this time.

I think there is -- I have felt a general concern from Oversight Board members as to whether someone ought to purport to speak for the Oversight Board other than the Oversight Board.

I also think there is some merit to what Mr. Freeman has suggested, that there might be some sympathy with the federal commission if the federal commission sees an entity or a filing backed by a group of entities that isn't just the Oversight Board

suggesting that the Oversight Board has a legitimate role.

To the extent that there's any material in the filing that describes a role for the Oversight Board, and it's not inconsistent with the role that the Oversight Board believes is properly the Oversight Board role, and that filing does not purport to be an Oversight Board filing, to speak for, you know, this body of government, I think there may be a benefit for having that come in. As often, there is a benefit if multiple briefs that also advocate your opinion come before any tribunal.

That does not answer the question of whether, at some point early, or perhaps in the comment period, the Oversight Board reiterated those by speaking for itself.

MR. PUGH: I guess my question would be whether -- is there -- assuming that we are -- feel that we're adequately described and provided for in the filing, based upon the language of the filing and based upon the role we have in the purported Bylaws that will be part of the filing with the two groups, whether there would be advantage to a filing from the Oversight Board indicating that we are satisfied with that filing and we are satisfied with the provisions in there that accurately depict what we believe is our position, knowing because of the fact that the filing is being made by the Trustee on behalf of the ISO and PX and not on behalf of the Oversight Board.

MR. FREEMAN: Could I make a suggestion that hopefully

would satisfy all the concerns?

That the language that's used in our filing be language that meets with your approval. You have 30 days after the filing. All parties or all entities, including the Oversight Board, would have within that 30-day period an opportunity to file on your own.

And you'd have a chance to read the filing and perhaps if there's some other thoughts, you might even have governing boards in place during that time. And there could be a filing made on behalf of the Oversight Board and the governing boards that hopefully adopted and can -- backed up what we had.

I think we're talking about strictly a question of legal tactics at this stage of the game. There is no substantive question that we want to file what you want to say.

I'm rather proud of the arguments we put together and the language. I think we make a -- I hope you think we make a respectable case. But if it can be strengthened or changed, we're happy to do so.

And it just strikes me that -- I think there's a feeling that it might be just a little more persuasive for us to speak first rather than having the Oversight Board go right into the lion's den, so to speak, head on.

MR. PUGH: Okay. Well, that's what I didn't know whether there we would be an advantage for us filing jointly with you on that or would we be better off to file a supporting

response?

MR. FREEMAN: I believe that it would be stronger if you feel that you want to respond, to read, in effect, read what's there. And then you can make additional points if you feel that you need to --

MR. PUGH: Yes. I just want to be --

MR. FREEMAN: -- at a time when the governing boards were also appointed. I don't think you're in any way giving up.

And since we -- it's the ISO and the PX that was ordered to file by March 31st, it would seem a bit unseemly for the Oversight Board to get into it at that time.

MR. SALTMARSH: As a tactical matter only -- and I agree with Mr. Freeman, that it is that -- taking into account that the Phase II filing schedule was directed at specific parties, the ISO, the PX, the utilities. And that the filing, when it occurs, will necessarily trigger two more rounds of filings, I think allowing that process to be opened by the filing coming in on behalf of the ISO and PX that supports a role for the Oversight Board, describes a role for the Oversight Board, that the Oversight Board is comfortable with. And then having the Oversight Board make, essentially, a concurring filing, adding a presentation of its case if it wants to, might actually be a fairly strong tactical way to go.

MR. PUGH: Do you agree?

MR. FREEMAN: Yes, sir.

MR. PUGH: Okay. Did I understand -- John, I don't know whether it was you or Ms. Martinez, had indicated that the filing was being gone through by Staff people?

Are we doing that, Erik? Are we going through it as well?

MR. SALTMARSH: I would say I'm two-thirds of the way through the filing, and I skipped over the part that's the ISO operating tarot.

MR. PUGH: Okay.

[Laughter.]

MR. PUGH: Well, the only thing I'm really concerned about would be if the filing does get in we have not had an opportunity to review it, and I'm not about -- going to get there, I'm sure, that we don't have a glitch somewhere that we end up with the response that says, "Oh, gee whiz, by the way, we didn't mean to say that in the filing. It should have said this."

MR. FREEMAN: My point is you'll be free to straighten this out better if you hold your fire right now.

MR. PUGH: Well, I understand.

But I just -- my real concern is I don't want to be in that position if we can stay away from it. I mean the more solidified we are with FERC, with your filing and our response, of course, is always the better off.

MR. FREEMAN: If you just --

MR. SALTMARSH: I believe that by, say, the end of the day tomorrow, I will have confidence that we will have marked every place in the filing that describes the role of the Oversight Board or describes how these entities are intended the function in areas that the Oversight Board believes are within its jurisdiction somewhere. And that we can share discussions of those with the Board members. And we've already had some constructive input, I think, at attempts to adapt those by the Staff of the trustee.

MR. PUGH: Thank you.

CHAIRMAN ANDERSON: So do we have a motion to that effect.

MR. COLEMAN: So moved.

MR. PUGH: Seconded.

CHAIRMAN ANDERSON: Seconded. All those in favor say aye.

VOICES IN UNISON: Aye.

[Motion carried.]

CHAIRMAN ANDERSON: What's the next item?

MR. HEATH: Well, there's always lunch or we may move on. What we have on the agenda next, Mr. Chairman, is the Board's consideration of the actual composition in terms of service of the nominees for the governing boards.

This is depicted in the matrix that was provided to the Board members this morning of the filings for the various classes and the nominees and their affiliations to those classes. Through the ides of March order, the March 15th order, the parties were to file their nominations through the classes as well as to make filings on the affiliations at the Board's request.

Those filings were made. You have them in your red binder as to the specific filings that were delivered to our office. this is a summary matrix or a summary table that depicts all the filings.

I would like to make one correction on that, and there may be more as we go through this.

But if you'd please on the matrix turn to -- I believe it would be under the PX Governing Board Structure, the Nonmarket Participant Section, if you would add Mr. Ross Clark's name to that category.

MR. PUGH: Ross Clark?

MR. HEATH: Yes, Ross Clark.

MR. COLEMAN: He's also an end-user.

MR. HEATH: At-large.

MR. COLEMAN: At-large.

MR. HEATH: That is correct.

MR. COLEMAN: Right.

MR. HEATH: And there may be other changes. We got

these late last night and tried to do the best we could to discern where these classes were -- nominees for each class.

Is now the Board -- it's really up to the Board's discretion how they want to question any of these parties or have any dialogue with the class representatives.

It's wholly within the Board's discretion.

MR. PUGH: A query.

We just have directed Staff to revisit the Bylaws with regard to the definition of the end-user classes and those who will be therefore available to nominate or become part of the selection process. It would appear to me to be somewhat premature to get to heavily into those classes at least at this point.

Secondarily, having just received the packet this morning makes it rather difficult, I would think, to do any kind of legitimate interviewing of parties.

Unfortunately I'd hoped to -- if we could do that, but I don't see how we can really, because without having done the background reading and know something about the party, I don't want them to have to come up and give me their whole history when I've got it here to read. That maybe we'd be better off to put off the interviews until the meeting of the 27th.

I don't know what the other Board members feel.

MR. SALTMARSH: There are two issues I would like to bring before the Board, and then obviously there's at least one

comment.

These relate to two of the classes, nonmarket participants and the ratepayer representatives, probably, particularly, residential ratepayers but perhaps also small commercial and maybe commercial.

When the Board requested at the last hearing input on what kind of turn around would be reasonable to get these nominations in, those in attendance seemed accepting of the idea of this quite-short turn around in order to get nominees before the Board today.

It has been our endeavor as Staff to have all notices of these Board activities distributed as widely as possible to interested groups that we could find. And our mailing list has been about on the order of about 1700 people.

We put that list together by merging several lists we had gotten from several sources. But I have gotten one contact this morning from a gentleman who identified himself as being on what I think is probably a pretty relevant group, that dealt with direct access, looking at a direct access at the Public Utilities Commission.

And he indicated that he and several other members of that group he had spoken to had not received these notices. And that causes me some concern to go back and audit our own list to make sure as they relate to that set of classes representing the

more diffused interests in the small ratepayers, that there might be some listing of interested parties out there that we have overlooked.

And we're going to try to revisit that, get back to you shortly, and perhaps with, perhaps, a recommendation of a second solicitation that would go more broadly.

The second issue relates to nonmarket participant class.

And in the proposal that is before the Board, the selection for nonmarket participants goes through public entities, through State regulatory and energy agencies.

And the two agencies that would appear to qualify in California have indicated that they were both trying to put forward nominees within the period specified by the Board. We have what I'm told is something of a place-holder nominee from the CPUC at least for one of the Boards. Mr. Scadding who may indeed be the designee for the ISO Board. But I had a call this morning suggesting they may wish to have someone else for the Power Exchange.

The other State energy agency was not able to get someone in in time.

And I just before the Board that these agencies, by virtue of how government works and needing to get certain approvals, wanted the Board to be aware that they've made an effort, and they may make a late submission.

And the order that went out does not preclude the Board from considering submissions after any date. It just directed that the Board wanted them to be in by a certain time.

CHAIRMAN ANDERSON: In view of that should we defer consideration of the nominees through to the next meeting, which is March 27th?

MR. COLEMAN: I have maybe a slight change in that.

I wonder particularly if they've taken the time to be present and everything else, if we could look at the investor-owned utilities members that clearly there's only three of them, clearly they got the notice. I hate to have people traveling back and forth all the time.

MR. PUGH: Yeah, yeah.

MR. COLEMAN: And so if we could find a couple --

CHAIRMAN ANDERSON: The municipal utilities as well?

MR. PUGH: Well, you know, the other thing we had talked about, there may be somebody who is here today that is unable to make the 27th.

CHAIRMAN ANDERSON: Okay.

MR. COLEMAN: Yes. I just wonder if we can try to deal with what we've got in front of us a little bit, just out of the convenience of everybody. It's --

MR. PUGH: I'm willing to try to treat some of that and see if we can get some of it done that way --

CHAIRMAN ANDERSON: Okay.

MR. PUGH: -- and those people that fit those categories.

I guess my primary one would be one who can't make it the 19th [sic]. And other than that, that if we have time we can take those that --

MR. COLEMAN: So maybe we ought to deal with the investor-owned utilities and anybody's who present will not be able to make the 19th [sic].

MR. PUGH: Okay.

MR. SALTMARSH: Mr. Chair, I notice we had two audience members raise their hands, potentially, to comment.

CHAIRMAN ANDERSON: Yeah.

MR. SALTMARSH: I guess I would just ask them: Is that the issue for both of you, that you would like to introduce yourself to the Board today out of conflict with the 27th?

AUDIENCE MEMBER: Yes.

MR. SALTMARSH: I guess that takes three or four, or so, on -- with that issue.

MR. HEATH: Now more hands are going up.

MR. SALTMARSH: I'm sure there are more. I just wanted to make sure we were passing over someone's comments to go on to that issue.

CHAIRMAN ANDERSON: That's a good idea. That's a good

idea.

MR. COLEMAN: I mean I do take seriously the fact that there may not have been adequate notice in some groups, and that we ought to get as much as opportunity to have adequate notice.

But in the meantime we've got people in front of us. And I'd like to try to deal with it, if we could.

MR. PUGH: Let's do it.

CHAIRMAN ANDERSON: Okay. Let's do the investor-owned -- let --

MR. PUGH: We find out who's here that raised their hand, I think, would be one of the ways to do it.

AUDIENCE MEMBER: At least with respect to Southern California Edison, our nominee is not able to be here today. He'll be here on the 27th.

CHAIRMAN ANDERSON: Okay.

AUDIENCE MEMBER: The same is true for Pacific Gas and Electric.

CHAIRMAN ANDERSON: Okay. San Diego Gas & Electric, is Terry here? I didn't see Terry either. Yes, okay.

MR. PUGH: All right.

CHAIRMAN ANDERSON: Takes care of the rest.

MR. PUGH: That was easy.

CHAIRMAN ANDERSON: Next. The young lady back there.

MS. GUTHRIE: Carol Guthrie with Chevron.

I'm not able to be here on the 27th.

CHAIRMAN ANDERSON: Okay. Would you come forward?

Do we have the --

MR. PUGH: Well, somewhere in here.

MS. GUTHRIE: I think you'll find my more complete nomination form under the California Industrial Users.

CHAIRMAN ANDERSON: Okay. We're searching for your --

MR. PUGH: We're not indexed.

CHAIRMAN ANDERSON: -- resume.

MR. SALTMARSH: Do you have an more hints?

MS. GUTHRIE: There should be a letter on Downey, Brand, Royer and Seymour letterhead. I'm actually nominated by three different entities. But the more complete nomination form is on that letterhead.

[Pause in the proceedings.]

CHAIRMAN ANDERSON: Okay. We've got you located. Tell us about yourself.

MS. GUTHRIE: My name is Carol Hines [phonetic] Guthrie.

I currently work for the Chevron Companies.

I'm an area manager in the Energy Services Group. In that capacity I have responsibility for managing electric procurement for Chevron in California as well as in other parts of the country.

In addition, I manage the advocacy efforts for Chevron on electric industry restructuring and on rate case interventions.

Chevron represents a very large customer throughout the country, and in particular in California. It's our single most important state in terms of the electric loads that we have in California. We cut across all customer classes.

We have over 750 service connections in California alone. Those range from single large industrial sites all the way down to our service stations. And we are served under more than 20 separate rate schedules in California.

In addition, we have supported the restructuring process both on our own behalf and through the efforts of various intervenor groups before the California Public Utilities Commission and before the California State Legislature.

We think that restructuring of the electric industry offers the single best opportunity for all consumers, large and small, not only to achieve better pricing but to achieve services tailored to their needs.

We also recognize the importance of the interconnected grid. We were greatly affected by the outages in August and see the ISO as being a critical component of the new market structure, without which the new market will not work.

We support and are represented by the Energy Producers and Users Coalition which is predominantly oil and gas companies

that either have end-user facilities, generating facilities and/or are fuel suppliers to electric generation in the state.

In addition, we are part of the California Industrial Users, which is an entity made up of large national companies such as Anheuser Busch, Hughes Electronics and Kimberly Clark, as well as others. And they represent primarily large industrial consumers.

So I bring with me a fairly broad representation of customers, not only of different sizes and different classes, but with a need to be balanced in my perspectives on the issues.

MR. COLEMAN: Were you tempted to join the board of the PX as opposed to the ISO?

MS. GUTHRIE: No. We see the ISO as being critical to reliability, which is an extremely important issue to us. And while the Power Exchange is an important component of the California market, we think that the precedence being set by the Independent System Operator will effect us not only in California but throughout the West.

MR. COLEMAN: So reliability is slightly more important than price; is that then --

MR. GUTHRIE: I suppose it depends on the facility, but in the end, yes.

MR. COLEMAN: Okay.

CHAIRMAN ANDERSON: Okay. Any questions?

MR. PUGH: No.

MR. HEATH: Just one. You are a California resident?

MS. GUTHRIE: Yes, I am. In fact, I'm certified Muni. I'm a Muni residential customer.

CHAIRMAN ANDERSON: Thank you for your testimony. And I'm sure that the Board will consider you for one of the governors of end-user at large.

MS. GUTHRIE: Thank you very much.

CHAIRMAN ANDERSON: Thank you.

MS. GUTHRIE: If you have additional questions, even though I can't be here on the 27th, I'm more than happy to answer them.

CHAIRMAN ANDERSON: Okay. All right.

MR. BRITT: I'm Randy Britt of Robinsons-May. I can't be here on the 27th.

CHAIRMAN ANDERSON: Yes. Right.

MR. BRITT: My name is Randy Britt. I'm employed by Robinsons-May Department Stores, also representing the California Retailer's Association. We're representing not only the department store industry in California but also the broader market of small retail stores, small commercial meters, as well, which includes everything from shoe stores and drug stores all the way up to the larger department store areas as well.

Robinsons-May and the California Retailer's Association

have been active through the Direct Access Working Group. I co-chaired one of the implementation teams for the Direct Access Working Group. And I am currently on the ISO Trust Advisory Committee as a commercial meter end-user representative.

CHAIRMAN ANDERSON: Give us a little of your background before you --

MR. BRITT: Sure. I've been working for Robinsons-May Department Stores now for 17 years. All of those years as either director or now divisional vice president of maintenance of Properties. So we're responsible to maintain all the department store entities within the State of California, Arizona and Nevada.

Primarily we have most of our stores in California, 53 stores, responsible for the major systems, operation, remodels, new construction, as well as for the maintenance of utilities and the management of electric utility billing and for energy management systems. And very heavily involved in demand-side management and reduction of consumption throughout the usage, as well.

CHAIRMAN ANDERSON: Will you have time to serve on the board? I guess you're a pretty busy guy.

MR. BRITT: That's true.

CHAIRMAN ANDERSON: And will you have time to serve on the board, from at least the start, because that's pretty heavy involvement?

MR. BRITT: Yes. There's no question. Robinsons-May and I have committed ourselves to this process.

And we have committed the time it takes to have been on the Direct Access Working Group which was extremely heavily involved from a political leadership position in our organization. And committed ourselves to at least one to two days per week on that basis; and have committed ourselves to two days plus on the Trust Advisory Committee for what was asked of us in that group, as well, and remained committed to do whatever it takes to get the governing board together.

CHAIRMAN ANDERSON: Any questions?

MR. COLEMAN: No questions.

MR. PUGH: You were selected based on that ballot that went through the ISO Consumer Group; is that right?

MR. BRITT: Also I had nominated myself, as well, yes.

MR. PUGH: Right.

MR. BRITT: But also as part of the balloting that went to the end-users, as well.

MR. PUGH: Right. That's all I have. Thank you, sir.

MR. BRITT: Thank you.

CHAIRMAN ANDERSON: Thank you, Mr. Britt, for coming. Any others? Yes.

MR. CAZALET: Edward Cazalet.

CHAIRMAN ANDERSON: Yes.

MR. CAZALET: Good afternoon.

CHAIRMAN ANDERSON: Yes. Thank you. Would you identify yourself in more specifics?

MR. CAZALET: Okay. My name is Edward Cazalet and I'm with Automated Power Exchange. And I'm self-nominated. Not exactly certain which categories I best fit into, but I think I bring a background to this board with an interest in seeing -- that would be useful to this board and seeing that the Independent System Operator achieves his mission of system reliability and facilitating the marketplace.

CHAIRMAN ANDERSON: I hate to show my ignorance, but what is the Automated Power Exchange?

MR. CAZALET: All right. Well, about a year ago when I saw the development of the PX and Independent System Operator, I was not involved. And I saw the design. And I spent 30 years in the business as an independent consultant for major companies as well as a private consultant working for electrical utilities and government agencies on these matters.

I wrote my Ph.D. dissertation on how to design markets for electricity 30 years ago at Stanford. And I saw what was proposed and I saw some problems with it.

And through some other people, they drew me into the WEPEX process. We wrote a paper on how to improve the design, of both the ISO and the PX. Some of those improvements were adopted

by the PX in switching from single-part to multi-part bidding. I'll explain that if you want to know about it -- I'm sorry switching from multi-part to single-part bidding. But that got us involved in the process.

And so we formed a company, Automatic Power Exchange, that will provide -- will be a scheduling coordinator into the Independent System Operator. We'll match buyers and sellers. We'll take no position in the market. We'll be a pure commodity type exchange. We will serve as a forward market to the WEPEX Power Exchange and a parallel market to those people who decide, for one reason or another, not to schedule or trade within the WEPEX exchange.

MR. COLEMAN: Given your sort of position as a scheduling coordinator, what areas do you think you might come in conflict with the overall operation of either the Power Exchange or the ISO?

MR. CAZALET: Well, I'm not blind to the order of the Power Exchange.

MR. COLEMAN: I understand. I understand.

MR. CAZALET: Yes. I don't think there would be any more conflict between us, as a scheduling coordinator, and virtually all of the other many parties who will become scheduling coordinators. So I don't see -- we're very interested in the ISO performing its mission of system of reliability. We want to see

the market work. That's why we're investing our time and money in making the market work. We're not here to replace the public PX, it's got its function.

But the Legislature provided for other ways to match buyers and sellers in the market. And we're providing one such way to do that. So I see no conflict with the role of the ISO. In fact, I think I can be of great service to the ISO from the technical point of view, as well as from -- given my background in the industry -- just to help them through the early days.

MR. COLEMAN: And does the -- but you'll have to excuse my ignorance, --

MR. CAZALET: Sure.

MR. COLEMAN: -- but does the ISO hire you or do you just maintain --

MR. CAZALET: No, no.

MR. COLEMAN: -- sort of a position in front of the ISO and the power users.

MR. CAZALET: As a scheduling coordinator?

MR. COLEMAN: Yeah.

MR. CAZALET: No. We pay fees to the ISO to schedule in.

MR. COLEMAN: Okay.

MR. CAZALET: We will be paid fees by parties who schedule through us. But, no, we do not take any money from the

ISO.

I might mention all the work I've done on this in the last year, almost -- I took no money from them, the trust, nor any party in the proceedings.

MR. COLEMAN: You will buy power from the PX, though?

MR. CAZALET: That's possible, yes. And PX, I suppose, at some point could buy power from us. Scheduling coordinators trade among each other. So, for instance, Enron would be in a position to buy power from the PX and buy himself power really to the ISO. So you'd sell ancillary services to the ISO in that sense.

MR. COLEMAN: Okay.

MR. PUGH: You are a California resident?

MR. CAZALET: Yes, I am, for 25 years, I think.

MR. PUGH: Okay.

CHAIRMAN ANDERSON: Okay.

MR. CAZALET: Thank you very much.

CHAIRMAN ANDERSON: Thank you very much.

MR. FLORIO: Good morning. You've seen my face already. My name is Mike Florio. I'm senior attorney for Toward Utility Rate Normalization.

In the submission that came in yesterday on TURN's letterhead, my qualifications are on the fourth page after the letter. I was nominated by the residential consumer groups to the

be on the PX governing board. And I'm also their nominee to be one of the end-user at large governors on the ISO governing board.

I have worked for TURN since 1978. And now that I've lost my hair and am wearing a back brace, I think I could say I've given the best years of my life to the residential ratepayers in California. I've been continuously engaged in representing residential customers in PUC and other related proceedings for almost, well, for over 18 years now. Was intimately involved in the natural gas industry restructuring. And more recently have gotten involved in the electric restructuring, particularly the Trust Advisory Committee and the Steering Committee.

That's, I think, the key information.

MR. PUGH: You're nominated for the ISO at large and the PX residential end-users, right?

MR. FLORIO: Yes, right. Yes.

MR. PUGH: Which would you rather do?

MR. FLORIO: That's hard to say. I guess I'm very concerned about the PX, that it actually become a viable, well functioning entity. I fear that not every party that's participating shares that feeling about the PX. I think everyone has an interest in making the ISO function as advertised. So in some sense I have a greater concern about the PX, but there are a lot of important issues affecting residential consumers involving the ISO. So it's hard to separate.

CHAIRMAN ANDERSON: Any questions?

Are you of California residence?

MR. FLORIO: Yes, I am.

At the appropriate time I'd like to make some brief comments about the process for selecting the end-user at large governors, but I don't think this is probably the time to do that. But if we could, before the end of the day, allow a few moments for that, I would appreciate it.

CHAIRMAN ANDERSON: Okay, all right. Thank you.

MR. MRIZEK: Good afternoon. My name is Edward Mrizek from the City of Palo Alto Utilities. I currently serve on the PX TAC. I have been nominated by the municipal utilities for the PX.

And my background personally is professional electrical engineer. I've had 28 years of municipal utility experience, engineering, engineering management. And currently I am the director of utilities for the City of Palo Alto. And we serve over 28,000 meters in the City.

We fully support the deregulation process. We have followed it since the beginning. We are also a gas utility. We're a full-service utility, so we have gone through the gas deregulation. And I'm available for any questions you may have. Commitment, we certainly intend, Palo Alto and myself, certainly intend to commit to this directorship.

CHAIRMAN ANDERSON: And will you have available time

to fully serve?

MR. MRIZEK: Yes, I will.

CHAIRMAN ANDERSON: Okay. You're for the PX governing board?

MR. MRIZEK: That is correct.

CHAIRMAN ANDERSON: Well, obviously you're a California resident?

MR. MRIZEK: Yes, yes.

CHAIRMAN ANDERSON: Any questions?

MR. COLEMAN: Yes. I guess a quick question.
How were you selected? You're selected by the --

MR. MRIZEK: The California Municipal Utilities Association submitted my name.

MR. COLEMAN: And that was --

MR. MRIZEK: That was --

MR. COLEMAN: -- was a reference to a consensus process.

MR. MRIZEK: That's correct.

MR. COLEMAN: I didn't understand what that was.

MR. MRIZEK: I was told they would like to have me serve after they reviewed names. And they submitted my name and nominated me.

MR. COLEMAN: And you're quite happy to serve?

MR. MRIZEK: Yes. I said first check with everybody

else, and they said fine, we would like to have you continue to serve.

MR. COLEMAN: And is the 28 electrical distribution systems that the CMUA represents the bulk of the municipal electrical systems?

MR. MRIZEK: That's correct.

MR. COLEMAN: Okay. Thank you very much.

CHAIRMAN ANDERSON: Any questions?

MR. PUGH: No, no questions.

CHAIRMAN ANDERSON: Thank you. Thank you for appearing.

MR. WOYCHIK: Good afternoon. My name is Eric Woychik. And I'm designated by the residential representatives -- residential ratepayers, I believe, to be the board member for the ISO and the PX. So that's in the residential end-users group.

My background is in regulation. I've previously worked with Mr. Gary Heath here at the Energy Commission. I was at the California Public Utilities Commission for a number of years, was a commissioner and advisor there for six years. I've been in consulting for about six years. I've been able to work internationally on many of the restructuring models. I've also been in the wars of the gas industry restructuring in California.

The one point I might make about California's restructuring effort is that I've been working on it for about

almost four years now, starting when there was the original Competitive Power Market Working Group, with Charles Stalen [phonetic]. And we basically summarized the issues at that point in 1995.

Then I've been working for UCAN, Utility Consumers Action Network, since that time. And more recently I'm now the substitute member for the Power Exchange, ISO and PX Technical Assessment Committee, so Mike Florio is my counterpart.

My qualifications, I should have referred to them, are under the TURN letterhead in your packet starting on page 5, I believe. So restructuring has been basically all I've been working on for the last almost 10 years. And I'm looking forward to participating constructively on the ISO and PX. And it's your choice.

MR. PUGH: Well, I take it you're currently a consultant with Strategy Integration?

MR. WOYCHIK: Right. I'm the president of the company. It's just myself, and I've been doing that for about four years now.

MR. PUGH: Okay. Currently under any consulting contracts with the electrical entities who are part of the ISO or the PX?

MR. WOYCHIK: No, sir, I'm not.

And there's one potential issue, actually Arizona Public

Service. I have an existing agreement with them. I'm going to be clarifying by letter that I will be doing no work that relates to California for them. The one possible issue would be because they want to play based in California. And I'm actually slated to help them on their competition docket. So I'll be writing a letter to TURN and UCAN, and if it's appropriate to cc them to this Board.

MR. PUGH: Okay.

MR. COLEMAN: Do you have any thoughts about how we should think about how to pick representations for residential end-users?

MR. WOYCHIK: Sir, that's a great question. I obviously was listening to Diane Martinez' comments and others.

It seems that these two groups have been so involved in trying to represent residential customers that I certainly think you have very good representation in them. I think that the question will be more the balance of the board and whether there's enough residential representation to really be able to represent their interests.

Frankly I've been feeling like I'm fighting an uphill battle in the last three and a half years in the process in California in just getting the issues for residential ratepayers on the table.

So I'm really worried frankly about the representation as a balance of power on the board. If there were more capability to

get residential representatives on the board that would, I think, be the most important concern.

MR. COLEMAN: Thank you.

CHAIRMAN ANDERSON: Any questions?

Thank you very much.

MR. WOYCHIK: Thank you.

CHAIRMAN ANDERSON: Yes, sir.

DR. HOUSE: Good afternoon. I am Lon House. I am one of the end-user at-large nominees for the Power Exchange.

If I could make one correction, instead of water and energy consultant, I'm representation the Association of California Water Agencies or ACWA.

If I could take a minute, I want to -- Mike wants to talk about the nomination schedule. And I've put in a yellow card. I'd like to talk about it for an instant.

What I'd recommend is that you use the at-large end-user group for entities that don't necessarily fall in any of the other groups. And this is very self-serving, and I'll explain what our problem is.

We're all the public and the mutual water companies in the state, so we deliver water to the entire state. We're probably the largest retail use of electricity. We have a peak demand of about 1,500 megawatts. We use about seven percent of the electricity in the state. So in one instance we are probably

the single largest retail end-user. But we're not residential, we're not commercial, we're not necessarily industrial.

On the other hand, we have about 1,500 megawatts of capacity, primarily hydroelectric capacity in a bunch of the dams, and a lot of smaller capacity. So in that instance we are also a generator of electricity.

And then we have, in anticipation of deregulation, we have formed a Joint Powers Authority, we've released an RFP for electricity services, and we're in the final stages of negotiating those services.

But one of the services that we are going to perform is there's about 30 agencies right now that are interested in being community aggregators. And this originally started out as primarily rural districts that wanted to -- they had farmers and they didn't have -- in many cases they don't have representation, because they're not incorporated.

So the water agency, which is the entity that is already in contact with them and already billing them and everything, is interested in aggregating their load and going out for their service for electrical service. So in that particular issue, which I think is -- I suspect that we will end up being the predominant community aggregators in the state, that also doesn't fit into any of these narrow categories. And so that's why I was nominated for the at-large group.

And I would just like to encourage you that we have some very -- I have some extremely good competition, and you couldn't go wrong with any of the people that are chosen there. But if I could suggest that you reserve some of those slots for entities like the Association, that don't fit into any separate category, but have these real broad interests, and don't show up as a particular category participant.

For my background, I have two Masters and a Ph.D. -- excuse me?

MR. COLEMAN: So what you're saying is we ought to save the at-large group for special interests?

DR. HOUSE: No. I would like to say at least one category in the at-large group -- okay.

MR. COLEMAN: I don't mean to be flippant about it, seriously. Because it seems to me that you either are at-large or you do have an interest.

DR. HOUSE: Well, I guess there what a concern because my name was brought up with the end-user's group. The concern was because I represent generators, I don't fall in the end-user's group, also. And so the problem that -- and that's why I was nominated for the at-large group.

The problem is if you have entities, and I don't know of there are other parties other than my association, that are in that boat that have multiple interests, that we don't fit in any

of these categories up here.

And there may be some of the nominees, for the at-large that do have a duplicate of, you know, a commercial or a residential or something in one of the groups up there. And whereas you get somebody that is as large as we are, it's conceivable that we could not show up on this at all, because we don't fit in any one of the categories.

MR. COLEMAN: Okay.

DR. HOUSE: As for my background, I have two Masters and a Ph.D. I taught engineering at graduate school at Davis for a number of years. I worked for the Energy Commission for a number of years. I was the Resource Planner for the Public Utilities Commission for a number of years. And since 1990 I've been out in the consulting business. And I work almost exclusively for the water agencies in the state now. I'm on retainer with them.

And I am a California resident.

CHAIRMAN ANDERSON: Questions?

Thank you very much.

DR. HOUSE: Thank you.

MR. FERREIRA: Good afternoon. My name's Dick Ferreira.

I'm the assistant general manager here at SMUD, so I thought I'd take the opportunity while everybody's in town to come

down and introduce myself. I'm one of the candidates to serve on the ISO governing board.

I've participated in this process actually from the very beginning with the -- on the ISO and later on through the process with the trustee.

I have over 30 years of experience in management operation in the electric utility industry, the last 10 years of which have been here with SMUD in Sacramento.

I am currently responsible for all generation, dispatching operations, our contracts. And during my term here with the district I also have been responsible for rates and energy efficiency.

I also currently serve on the Board of Trustees for WFCC for reliability.

SMUD, as you're probably aware, is the second largest public utility here in California. Fifth largest in the nation.

Our primary concern obviously will be to represent the municipal community, our customers here and customers of municipalities in the state in general, and also to focus principally on reliability.

And a very important issue for us will be in the market power issues to make sure that this process will work to the benefit of all the customers, particularly the residential customers here in the state.

That's a brief synopsis of my background. And I'd be happy to answer any questions.

CHAIRMAN ANDERSON: Thank you.

DR. HOUSE: Thank you.

CHAIRMAN ANDERSON: By the way, thanks for letting us use SMUD facilities today.

DR. HOUSE: Oh, we'll charge this to the trustee, so that will be fine with us.

[Laughter.]

MR. FREEMAN: I was going to say something nice about Dick because he used to work for me. But after that --

[Laughter.]

CHAIRMAN ANDERSON: Any other candidates?

MR. JETMALANI: My name is Vishnu Jetmalani. I work for the Bonneville Power Administration. I am currently in their bulk power marketing department. And prior to that, about six months ago, I worked as an attorney in their power and transmission group.

I was nominated by BPA. We didn't have time to consult with other members of the public buyers and sellers class. But I was nominated by BPA to be on the PX governing board.

I am currently serving as an alternate member on the TAC, the Trust Advisory Committee, and have been attending the Steering Committee meetings and was an active participant in the

Governments Agreements and Tariffs Group.

I'm certain the question will come up, so I'll say it right upfront: I'm not a resident of the State of California. I understand that there are some difficulties there because the law apparently requires that all members of a governing board of a public corporation need to be residents of the State of California.

I'm not sure if I'm correct, exactly, on that, but --

MR. SALTMARSH: It's the sections of the restructuring legislation itself, AB 1890, Sections 337 and 338, I believe, or 336 or 337, that describe the governing boards of the ISO and PX as corporations, that specify to this Oversight Board entity that the persons it selects should be California residents.

MR. COLEMAN: So does that mean we cannot consider this as an applicant?

MR. SALTMARSH: That means to comply with California law the Board would have to limit its appointments to California residents.

MR. JETMALANI: And that would be despite FERC's decision if that might be discriminatory or anti-competitive to out-of-state interests that would be selling and/or entities like BPA that have 80 percent of the transmission in the northwest and, of course, are connected with California.

CHAIRMAN ANDERSON: Are you a resident of Washington

or Oregon?

MR. JETMALANI: Oregon.

I have asked BPA if I could relocated to California. That decision hasn't been made one way or the other.

I presume that we will be at some point providing comments probably in the intervention process on the issue of residency as well as maybe some other matters.

MR. PUGH: They have had residents here before, I know.

MR. JETMALANI: What's that?

MR. PUGH: BPA has had --

MR. JETMALANI: Yes, we did have an office.

MR. PUGH: -- resident -- yes, Steve Wright was a resident here. Yes.

MR. JETMALANI: We have Steve Oliver and a few other people that were in Sacramento, actually, I believe. But we've closed that office.

MR. PUGH: Okay.

MR. COLEMAN: I mean my suggestion is we go ahead and consider it on the basis that if we can -- we've interviewed the candidate. If we can't, we can't.

MR. JETMALANI: And I understand that.

CHAIRMAN ANDERSON: Okay.

MR. JETMALANI: There will be another gentleman here next week, a Tom Delaney [phonetic], who also works for BPA. And

he's a Washington resident. And we have nominated him for the ISO for board of governors. So I guess if you are interviewing people again next week, he will be here.

CHAIRMAN ANDERSON: Thank you.

MR. JETMALANI: All right. Thank you.

MR. COLEMAN: Just one quick question.

If we do get to the point where we conform California law and are able to have out-of-state representation, how would you suggest we go about the selection process?

I mean Bonneville Power is obviously obvious. But there are other people that supply power to out of state. How would you suggest we consider the problem of representation?

MR. JETMALANI: For all of the --

MR. COLEMAN: For out of state power producers.

MR. JETMALANI: -- states or just for -- out of state power producers.

Well, I had proposed at least for the public buyers and sellers category in some drafts that we did in the Bylaws of posting it in a number of different places, from the home page for WEPEX to a number of other places, that there is these seats available, and try and get it to all the different entities or most of the entities or trade associations, that there is this seat for, as you say, for out of state entities, whether they be private or public buyers and sellers, or other entities, and

contact a whole number of people.

And then set up a meeting at some point where people can vote to select which candidates represent that body.

MR. COLEMAN: But there is no --

MR. JETMALANI: There is no --

MR. COLEMAN: -- single industry group that we could look to or --

MR. PUGH: Not for publics.

MR. JETMALANI: No. I can certainly provide names of different groups. But there's --

MR. COLEMAN: No, I was just interested.

MR. JETMALANI: -- no particular entity that would represent everyone.

MR. COLEMAN: Okay. Thank you.

CHAIRMAN ANDERSON: Thank you very much.

MR. JETMALANI: You're welcome.

CHAIRMAN ANDERSON: Carolyn.

MS. KEHREIN: Unfortunately I don't think I'll be quite as brief as last week, but I will attempt to.

Well, I'll start off with a nonrelated comment, which is that Dr. Barkovich couldn't be here today. But she will be here next week. But she asked me to convey -- there is a package from the consumers in your red binders. And in there it lists who voted.

Somehow some of the ballots got lost and hers got lost, so it wasn't listed that she had voted. And she wanted to let you know this was important to her, and she did vote.

So I got lots of phone calls because people figured I would be coming today.

On to another minor issue.

On the matrix that was prepared for you, my affiliation is listed incorrectly on the ISO page. It's correct in your binder and incorrect here.

For the ISO, I am representing an ad hoc group of miscellaneous consumers which include Hewlett-Packard, Gordon Beirsch Brewery, TRW, USF and Zachy Farms.

So it's correct on the PX, in which case CMA has nominated me on the PX side.

Just to give you a little bit of background of what I was doing prior to deregulation in California.

I worked for Proctor and Gamble for 10 years here in Sacramento, and had numerous responsibilities. But some of the relevant ones included operating their cogeneration facility that they used for steam.

I was in charge of energy regulatory affairs. Was responsible for buying the energy and managing the energy contracts.

And also did the purchasing, was the plant purchasing

manager which, as from a lot of the work that's been going on with the trust, and having to procure lots of things, millions of dollars worth of things, that background comes in handy.

I am a certified purchasing manager and I'm also an engineer.

The last thing that I did that is somewhat relevant is while I was with Proctor and Gamble I worked on the implementation of the gas restructuring.

What I have been doing the last couple of years is I have, in my capacity as a regulatory consultant, have been working more than full time on the implementation of the ISO and the PX.

I have participated in a broad range of the technical teams -- so I don't forget, I won't name them all. But, for instance, the technical teams that dealt with transmission, ancillary services, bidding, settlements, all the various rules and protocols. Was also part of both the PX and ISO business system bid evaluation teams. Was also somehow managed to also be involved in a number of the working groups established by the CPUC.

Like Randy Britt, I was also a co-chair of one of the DAWG committees. Participated in the Ratesetting Working Group. Instigated a group which has been renamed, and I will not mention the acronym, which is the Meter and Data Access Working Group.

And also am part of the Scheduling Coordinator's User

Group. And I also am a Steering Committee alternate for Glen Sharon, who represents CMA on the Steering Committee of the ISO and PX.

If you want to ask me the question later, if I can find the time, that will justify how much I've been able to juggle in the past.

I mainly work for consumers, but sometimes I have taken on some interesting clients in the name of my consumers. For instance, it's appropriate we're sitting in this building because a lot of times I sit right there where these folks are sitting because one of the things I'm doing, is SMUD is using me as a consultant because they're trying to go ahead of the curve. And they are trying to implement a less complex version of restructuring of direct access by the summer.

And so they have hired me to find out what -- help them design something that the consumers would find palatable. So I've worked with them, so you do end up with strange bed fellows.

I have also had other interesting -- in the name of my consumer clients, have been hired by various folks which, if you're interested, we can discuss some of that.

Why I am interested in being on it, is you notice I've been selected by the industrial customers to represent them on the PX and have been nominated by various entities for the ISO. And why?

One of the reasons is there are few of us -- the reason why I was doing all those things is there were not a whole lot of people that had the ability, the time or the knowledge to participate on behalf of customers in all these different forums.

So, unfortunately, I've got to cover more than I wanted to, which gives me a lot of background.

And one of the things we keep finding out is issues resurface. We had an idea. We worked on it on the technical team. We found it had a ramification over here that wasn't acceptable. And so we went back another path.

And what you find out is people who didn't -- weren't part of that process, keep bringing up ideas that sound good that we killed at a previous point because of the ramifications that are not otherwise obvious.

So for some of those reasons of knowing where to quote some other people, "where the bodies are buried," and knowing what we've done over the last two years on the technical issues.

The other is, for my customers, making sure there's ample competition. I don't like the word "robust," of saying the market is thick enough. That it's not so thin that we don't have true competition. That there is a level playing field. An efficient market.

But at the same time we need to mitigate market power and also reliability is key, as you've heard before.

So that's a little bit of my background and where I've come from. Did you have any questions?

And I am a California resident.

MR. COLEMAN: No questions.

MR. PUGH: Most of your contract work then has been with end-users and customers as opposed to generators?

MS. KEHREIN: The bulk of my clients are customers.

But one of the things that we found in this process, with all the different places to be, and some of you are aware of the limited budgets that consumer organizations operate under, we have found that our potential suppliers often overlap with us about 90 percent of the time.

So we have accepted funds from those suppliers in order to be present at the table and represented our position which, most of the time, was in concert with their position. We're both looking for an efficient market with ample competition.

MR. PUGH: Are you currently under contract with any supplier of generators or --

MS. KEHREIN: I am currently doing some work which is combined for CMA and Enron, and that contract as it now stands expires at the end of this month. It's to work on the March 31 filing.

MR. PUGH: Thank you.

CHAIRMAN ANDERSON: Thank you.

Any other applicants or nominees?

All right. Public comment.

Dr. House.

DR. HOUSE: I already gave my comments. That was about the make-up of the at-large end-users.

CHAIRMAN ANDERSON: Okay. All right.

Mr. Florio.

MR. FLORIO: Thank you.

This, in some ways, follows up on comments I made last week regarding the end-user at-large representatives.

I think it's important that this Board take great care in considering the balance of end-user representation. We believe it's important to have at least two residential class representatives on both boards. And by that I mean residential consumers, not government agencies.

I believe you received from the California Farm Bureau a package that represented on the results of a balloting that was held.

And I want to emphasize that none of my comments reflect on the Farm Bureau or on Karen Mills, who was drafted for that job only because everyone trusts her. So I don't want to imply that there's anything about the Farm Bureau or Karen Mills that's problematic. But there's a lot that was problematic about this balloting process.

Number one, it's not the process that was laid out in the Bylaws. So, you know, it was something that was done extraneous to that.

There were people who were very interested in being on these -- who would have been interested in being on the ballot who were not made aware of the opportunity to be on the ballot, which obviously affects the outcome.

And I think you may hear a bit later from one of those folks who was left out, who I believe would have garnered wide support.

I also think it's important that you look at who voted. And I think if you do that you will see that there was a preponderance of large users who voted.

And so not surprisingly the results were that large users won the ballot. But I don't think that to choose as at-large representatives one Commission Staff representative and three industrial customers gives a fair representation of end-users.

Obviously industrial customer representation is essential. And we wouldn't quarrel with that for a moment.

But to have three of the at-large and four of the total eight end-user representatives all from the industrial class, I think is unbalanced.

I would suggest instead that you look to something like two industrial, two residential, two from the commercial and

institutional classes, one agricultural, and one CPUC ratepayer advocates.

I think that would be a much more balanced group. That's more or less how the PX representation breaks out.

But on the ISO, it is quite unbalanced if you look at this balloting process. And I think it would be a very unfortunate first step to select end-user representatives that were weighted so heavily toward one class to the disadvantage of others.

Thank you very much.

If there are any questions, I'd --

CHAIRMAN ANDERSON: Okay. Carolyn, you indicated you wanted to comment? Consumer selection process or overall process comments.

MS. KEHREIN: Having talked with Mike yesterday, I also wanted to -- the first comment out the door is the same, is Karen Mills was selected because we looked at everybody and everybody said they could trust her. So unfortunately she got a thankless job the last two days.

What happened with the process was that, as you know, Friday at about one o'clock we all got to leave and try and get you something by last night by close of business.

Anybody that had turned in something to you that was in the packet, that had expressed an interest to a current TAC or

Steering Committee member or who had otherwise contacted anybody that we knew of was included on the ballot.

Unfortunately there was one qualified person who had not, although someone from her firm was there, she had not gotten the message and did not contact anybody until about 24 hours before it was due.

And I just wanted to explain that we understand there are failings in the process. We were trying to get something in at least to give you some guidance.

It's not the perfect output. We just -- we tried. And I agree with some of Mike's comments about it would have been better to have a longer process.

Erik, what do the Bylaws say as far as how long to process would normally take?

MR. SALTMARSH: I don't remember. It's 60 days or 90 days prior to a vacancy occurring --

MS. KEHREIN: So we tried to do it in 60 or 90 hours. And we got you something that we think is not perfect but it's fairly good.

And using your professional judgment, you can figure out what to do with it and what you need to tinker with, et cetera.

And then the last comment would be for me as a large consumer rep -- or, not a large consumer rep -- a noncore consumer rep, and that is you may need to do some research as out what

ORA's work plan is.

He keeps referring to Elena as a member of the California Public Utilities Commission. She is the director of the ORA. And ORA's work plan specifically states that they are representing the core ratepayers' interest.

So when you are looking at what you need to have, Elena's challenge, which has been adopted by the CPUC, states that she is to work on core interests.

And we understand the need for residential. And as you notice, the public vote did end up with three residential customers on the PX. And, in our mind, two on the ISO.

And the last clarifying point would be as Mike and his comments clarified -- characterized me as an industrial.

On the PX I am representing an industrial constituency.

On the ISO, the ad hoc group includes ag, small and large commercial and industrial. So just a clarifications since I think Mike was referring to me as an industrial.

Thank you.

CHAIRMAN ANDERSON: Okay. All right. Why don't we take a 10-minute break. We have four people who want to make comments, and so will you please hold?

And a 10-minute break.

[Brief recess taken from 2:02 to 2:14 p.m.]

CHAIRMAN ANDERSON: Could we come to order again,

please?

I'm going to do these alphabetically so I don't get accused of preference.

Dan Carroll.

MR. CARROLL: Thank you, Mr. Chairman and members of the Board.

I am with the law firm called Downey, Brand, Seymour and Royer here in town. And we have, for over 20 years, been involved in energy related matters at the PUC, both electricity and gas.

I come here as a lawyer who represents the California Industrial Users, who is one of the groups that nominated Ms. Guthrie for the Board.

I am here largely because of Mr. Florio's comments.

The first thing I want to say is Ms. Kehrein said something to you about the charter of ORA being to represent residential customers.

She got that from me. I remembered reading the 1997 business plan for ORA in December in my office and could have sworn that something like was there.

I got it back out this morning to find it and couldn't find it. I don't know that it was there or not there or if it was some place I didn't find this morning.

But if anybody wants to say that Ms. Kehrein was wrong about that, that's because I was wrong, not she. And so I wanted

to be sure you understood that.

However, I can tell you from my activity over the last almost year and a half at the PUC that -- and from activity in the DAWG, I was on the DAWG as well and was the co-chair of the implementation team with Mr. Britt, who's already spoken to you earlier today.

My observation is that at least recently the primary interest of ORA is small commercial and residential customers as opposed to larger customers, such as those I represent.

Having said that, we disagree with Mr. Florio's perspective about basically taking what's supposed to be a board of what I call, at least in the end-user customer class, four designated seats and four at-large seats, and turning that into eight designated seats, two apiece. It's not what the Bylaws say.

The Bylaws say you're supposed to have four end-user, at-large customers.

We believe that the kinds of concerns that Mr. Florio raises about residential customers are appropriate for you to consider. We also believe that there are any number of other things that are appropriate for you to consider in appointing at-large seats.

To me "at-large" means without portfolio.

The reason we're happy supporting Ms. Guthrie is because although we represent her on an industrial basis, as does EPUC,

who she's also involved with, she is indeed a representative of a large number of customer classes, virtually everybody except residential, because that's who Chevron deals with.

I'm not going to say anything more about here at this point. She's already talked to you about herself. You'll make your decision.

My point is that's an example of someone who has a very broad base that you could look at in the kind of experience and representation they have as opposed to seeing this as a special interest kind of appointment to the four at-large seats.

I think instead what you ought to be looking for on all the at-large seats is simply qualifications: Who is best suited to serve the people of the State of California via the ISO and PX.

And that's all I have.

If you have any questions, I'd be happy to respond.

CHAIRMAN ANDERSON: Thank you for your comments.

MR. CARROLL: Thank you.

CHAIRMAN ANDERSON: Mike Murray. Mr. Murray.

MR. MURRAY: Good afternoon, Chair and other members of the Board.

My name is Mike Murray. And I am the director of state agency affairs for Pacific Enterprises, which is the parent of Southern California Gas Company.

We have put before your Board a nomination for one of the

members on the ISO member at-large, Mr. Fred John, who is our senior vice president of public policy and law.

Mr. John can be available next week to come and testify before your Board and answer any questions you have.

I just wanted to briefly mimic a couple comments I've heard earlier on the end-user at-large category and basically concur with some of those comments.

We think that it should be a broad based category.

Southern California Gas Company has been involved in the electric restructuring process throughout its evolution, over the last six or seven years.

We support the expansion consistent with Dr. House's comments of the end-user at-large governors positions to basically be a broad approach that would encompass all the different stakeholder interests in this process.

Southern California Gas Company serves, along with all the other LDCs in the state, over 20,000 megawatts of generation in the state. About 40 percent of through-put goes to electric generation.

We have believed that the end-user at-large governors roles would be to protect the interest of local generation. And we have represented end-users, various end-users at different regulatory proceedings, such as before the FERC and the CPUC.

We think that we would bring to the table a broad

experience in this area. And I think you will see that once Mr. John testifies before your Board next week.

Thank you.

MR. COLEMAN: A quick question.

I guess I'm a little bit still confused about this at-large category.

The at-large category needs to be carefully balanced among special interest groups? Or it needs to represent the citizens at large?

What is your opinion?

MR. MURRAY: Well, we represent -- like I say I our stated testimony, we have represented a number of end-users at various regulatory proceedings. So --

MR. COLEMAN: Okay. But I guess I'm still a bit confused.

Is there really -- conceptually, is there a category of at-large end-users that do not represent a particular interest group?

MR. MURRAY: You mean of the four that are specified? The agricultural --

MR. COLEMAN: No. Just theoretically.

I mean if we're going to select candidates out of this particular group, do we need to carefully question people who are as at-large as possible? Or do we need to create a balance within

the group so that the group effort is at-large?

I'm just happy to take your opinion here. I mean it seems to me that we have a sort of -- at least a couple of trends here.

One is to use the at-large group to find representation for people who did not hit another category.

MR. MURRAY: And -- and I --

MR. COLEMAN: And we've heard a number of people advocate that this morning.

MR. MURRAY: We would support that broad interpretation.

That if someone who can't fit or be pigeon-holed in one of the particular categories that have been identified but yet are significant stakeholders in the process and can bring to the table expertise that will help the ISO function, which I think is all of our goals here, is to make this thing happen by January 1st and to reduce rates to the ratepayers of California. So --

MR. COLEMAN: But that doesn't strictly mean they're at-large?

MR. MURRAY: In the strict interpretation, I agree. It doesn't mean that they're at-large. Right.

MR. COLEMAN: Okay. And if you had to really -- let's say when you can, and I know you can't exactly. But if you really were us and you had to pick "either at-large" or you were going to

use this category to pick up people who you did not feel was adequately represented by the other categories, which one would you choose?

MR. MURRAY: It would be our preference that you would choose the one where you had not picked up the others in another category.

MR. COLEMAN: Okay. Thank you.

CHAIRMAN ANDERSON: Thank you. Thank you, Mr. Murray.
Mr. Smutny-Jones.

MR. SMUTNY-JONES: I was prepared to explain the self-selection process for the generators, but we can forego that until next meeting, if you would prefer.

CHAIRMAN ANDERSON: Thank you.

MR. PUGH: Well, --

CHAIRMAN ANDERSON: Yes. He's also been nominated.
So he can have the next meeting, too.

Ms. Solé.

MS. SOLÉ: Hello. I'm here on behalf of Dian Grueneich. Dian Grueneich could not be here for this meeting. But she will be here the next meeting.

And she is the person that would -- was not able to participate in the self-selection group of the end-users group.

And so I just wanted to point out that she was unaware that that process was taking place. She does represent state

agencies.

And she's very interested in serving on the board. And so she hopes that you'll give her nomination due consideration. And she has, in fact, contacted some groups after the fact and obtained her support -- of her nomination.

MR. COLEMAN: And she represents who again?

MS. SOLÉ: She represents the Department of General Services, the University of California, the California State University and a number of other clients that are listed in her application.

MR. COLEMAN: Thank you.

CHAIRMAN ANDERSON: The CSU statewide?

MS. SOLÉ: CSU is statewide, yes.

CHAIRMAN ANDERSON: No. I mean does she represent CSU statewide?

MS. SOLÉ: Yes, she does.

And she'll be available next week to answer any questions.

CHAIRMAN ANDERSON: Oh, she'll be available next week.

MS. SOLÉ: Oh, yes.

CHAIRMAN ANDERSON: Okay. Thank you.

MR. PUGH: Thank you.

CHAIRMAN ANDERSON: Thank you very much.

Anybody else? Comment.

Well, we'll adjourn to March 27th 10:00 a.m., CPUC in San Francisco. Okay? Thank you very much for attending.

And the meeting is adjourned.

[Public hearing adjourned at 2:25 p.m.]

CERTIFICATE OF REPORTER

I, **GEORGE PALMER**, a duly commissioned Reporter of **CourtScribes**, do hereby declare and certify under penalty of perjury that I have recorded the foregoing Board hearing which was held and taken at the **STATE of CALIFORNIA OVERSIGHT BOARD, In the Matter of: Electric Industry Restructuring** in Sacramento, California on the **19th day of March 1997**.

I also declare and certify under penalty of perjury that I have caused the aforementioned hearing to be transcribed, and that the foregoing pages constitute a true and accurate transcription of the aforementioned hearing.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

Dated this **23rd day of March 1997** at Foresthill, California.

GEORGE PALMER
REPORTER

